



SANGHAVI LAW OFFICE

## **PRIVATE COMMUNICATION**

To: Chair, RSU 21 Board of Directors  
From: Sanghavi Law Office, LLC  
Re: Report of Independent Investigation  
Date: October 12, 2019

### **I. Introduction**

This report addresses an independent investigation conducted by Sanghavi Law Office, LLC (“Sanghavi Law Office”) in connection with an April 3, 2019 request for proposals (the “RFP”) from Maine Regional School Unit 21 (“RSU 21”) Board of Directors (the “Board”). The Board, on May 10, 2019, engaged Sanghavi Law Office to investigate issues related to allegations made by a former history teacher (“Teacher A”) at Kennebunk High School (“KHS”) in a Maine Human Rights Commission complaint dated January 7, 2018 (the “Complaint”). Specifically, the Board requested that Sanghavi Law Office make findings of fact related to: 1) Teacher A’s allegations in the Complaint of harassment, discrimination, and retaliation; 2) Teacher A’s allegation that RSU 21 failed to investigate or respond adequately at the time of the alleged conduct; 3) the administration’s communications to and from the Board regarding the Complaint and related settlement proposals; and 4) the Board’s oversight of RSU 21’s response to the Complaint. In addition, the Board requested that Sanghavi Law Office make determinations regarding whether the administration or the Board violated RSU 21 policies related to these matters.<sup>1</sup>

### **II. Summary of Investigative Steps**

During this investigation, the investigative team at Sanghavi Law Office (the “Investigative Team”<sup>2</sup>): 1) conducted interviews; 2) reviewed documentation; 3) made findings of fact<sup>3</sup>; and 4) made determinations regarding whether the administration or the Board violated RSU 21 policies relevant to this investigation.

The Investigative Team interviewed 31 witnesses (the “Interviewees”), some multiple times. The Interviewees included: 1) Teacher A; 2) the Superintendent; 3) the Assistant Superintendent/Affirmative Action Officer (the “Assistant Superintendent”); 4) the KHS principal (the “Principal”); 5) KHS assistant principals (“Assistant Principal A” and “Assistant Principal B”); 6) the KHS School Resource Officer (the “SRO”); 7) parents of RSU 21 students;

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<sup>1</sup> The determinations regarding violations of RSU 21 policies are informed by regulatory guidance and legal precedent, as appropriate.

<sup>2</sup> For the sake of simplicity, the term “Investigative Team” is used throughout this report to refer to any member of the Investigative Team.

<sup>3</sup> The findings of fact are listed at the end of each section if relevant to the determination.

8) KHS students and former students; 9) RSU 21 teachers and former teachers; 10) RSU 21 staff members; 11) a grievance officer; 12) RSU 21 Board members; and 13) community members.

The Investigative Team reviewed documentation<sup>4</sup> including: 1) relevant RSU 21 policies; 2) the Complaint and related filings; 3) relevant evaluations of KHS teachers; 4) relevant KHS student records; 5) relevant email communication; 6) a funding proposal for an Education Foundation grant; 7) articles regarding an incident that occurred in Portland, Maine related to students at Casco Bay High School; 8) a document regarding evaluations at RSU 21; and 9) relevant Board meeting minutes.

### **III. Background Information**

Teacher A was hired as a probationary history teacher at KHS in September 2015. She taught at KHS for three years, leaving after the 2017-2018 school year.

#### **A. The Complaint**

On January 8, 2018, Teacher A filed the Complaint with the Maine Human Rights Commission (“MHRC”). Teacher A alleged that KHS and RSU 21: 1) discriminated against her because of her race;<sup>5</sup> 2) retaliated against her because of her opposition to race discrimination; and 3) retaliated against her because she reported what she “had reasonable cause to believe were illegal and unsafe conditions” at KHS and participated “in inquiries into those conditions.” Specific conduct described in the Complaint included:

***Student A’s Threat:*** Teacher A, in the Complaint, alleged that in December 2015, Student A threatened to burn her house down. Teacher A alleged that to her knowledge, KHS never took action, other than by removing Student A from Teacher A’s class.

***Confederate Flag Incident:*** Teacher A, in the Complaint, alleged that on March 17, 2016, Student B, Student C, Student D, and Student E “harassed and intimidated” her with a Confederate flag and then broadcast a video of Teacher A’s harassment on social media. Teacher A alleged that KHS failed to respond adequately to this incident.

***Civil Rights Team Letter:*** Teacher A, in the Complaint, alleged that during the 2016-2017 school year, [REDACTED] “directly intervened to impede” Teacher A’s work as an advisor for the KHS civil right team (the “KHS Civil Rights Team”) by prohibiting students from sending a letter of support to “victims of a racially motivated hate crime at a nearby high school.”

***Summative Evaluation:*** Teacher A, in the Complaint, alleged that [REDACTED] engaged in a retaliatory evaluation process.

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<sup>4</sup> Except as otherwise noted, all documents quoted in this report are presented with their original spelling, grammar, capitalization, and punctuation.

<sup>5</sup> Teacher A identified herself as black.

## **B. RSU 21's Response to Teacher A's Complaint**

On February 23, 2018, RSU 21 provided a response to the Complaint (the "Response"). RSU 21 requested an administrative dismissal of the Complaint for failure to state a claim. RSU 21 indicated that even if Student A's threat, the issue involving the letter from the KHS Civil Rights Team, and the incident involving the Confederate flag were harassment, three incidents occurring over a two-year period were not sufficiently severe or pervasive to create an environment that a reasonable person would find hostile or abusive. RSU 21 wrote that Teacher A's retaliation claim should be administratively dismissed because Teacher A had not engaged in a protected activity, and had not suffered any adverse employment action.

## **C. Teacher A's Reply to RSU 21's Response to the Complaint**

On April 20, 2018, Teacher A filed a reply to the Response (the "Reply"). Teacher A, in the Reply, wrote that RSU 21 permitted a racially hostile work environment at KHS, and that RSU 21 retaliated against her for opposing such an environment.

## **IV. Findings of Fact**

The Investigative Team made findings of fact regarding issues relevant to the Complaint including: 1) Student A's threat; 2) the Confederate flag incident; 3) a 2016 request regarding funding for books, relevant to Teacher A's retaliation allegation regarding her 2016-2017 summative evaluation; 4) the KHS Civil Rights Team letter; 5) Teacher A's 2016-2017 summative evaluation; and 6) communication and response related to the settlement proposals and Complaint.

For each of the above issues, the Investigative Team summarized relevant information gathered from interviews and documentation, and made findings of fact, based on the preponderance of the evidence, regarding what occurred. The determination regarding what occurred was not based on any one factor, but rather on the totality of information obtained during the Investigation, using the preponderance of the evidence standard. When appropriate (e.g., when Interviewees disagreed regarding what occurred), the Investigative Team provided an explanation regarding its reconciling of conflicting accounts.

### **A. Student A's Threat**

Based on information from the Complaint, during the 2015-2016 school year, Teacher A taught a 9th grade world history class. Teacher A indicated that Student A was in this class.

Based on the Complaint and interviews with Teacher A, on December 9, 2015, Educational Technician A overheard Student A tell another student that he and Teacher A were neighbors, and that sometimes Student A felt like "burning the house down and shooting himself," (the "Threat") and Educational Technician A reported the Threat to Assistant Principal A. This Threat was documented in PowerSchool, an electronic record system used by RSU 21.

Based on interviews with Teacher A and in the Complaint, Teacher A spoke with Assistant Principal B on December 9, 2015 to report the Threat, and then at the end of the day, Assistant Principal B told Teacher A that he had spoken with Student A who denied threatening to burn down Teacher A's house. Assistant Principal B said that he spoke with Teacher A "a couple of times" about the Threat.

Based on interviews and documentation, Student A was withdrawn from Teacher A's world history class on December 10, 2015. Based on documentation, Teacher A was notified that Student A was removed from her class by email on December 10, 2015.

Based on interviews and documentation, the school performed a risk assessment of Student A sometime on or around December 10, 2015. A summary of the risk assessment noted that the risk assessment was performed by a licensed psychologist (the "Examiner"). The summary indicated in part that Student A told the Examiner that: 1) Student A did not like his history teacher because she "kicks" students out of class; and 2) Student A had made a comment that his history teacher was his neighbor and that he should burn the house down. He told the Examiner that he was referring to his own house. The Examiner noted in the risk assessment that there was nothing to indicate that Student A had made any plans or had taken any steps to burn down the teacher's home.

Teacher A and Assistant Principal B said that Assistant Principal B told Teacher A that she should report the Threat to the SRO. Based on interviews, Teacher A reported the Threat to the SRO.

The SRO said that Assistant Principal B told him about the Threat and that the SRO began an investigation. Based on interviews and documentation, Teacher A spoke with the SRO about the Threat. The SRO said that the educational technician who heard the comment reported that she feared the student was referring to Teacher A. The SRO stated that there was nothing "racial in the comment" made by the student, as reported to him. The SRO said that Student A was referred to the District Attorney's office.

Based on the totality of information provided during this investigation, including but not limited to the words used in the Threat (i.e., that did not include any race-based words), the SRO's investigation (i.e., that led to his conclusion that there was nothing racial in the comment), and Student A's explanation to the Examiner regarding why Student A did not like Teacher A, which was not racially motivated (i.e., that she kicks students out of class), the Investigative Team determined that the preponderance of the evidence was insufficient to find that the Threat was based on race.<sup>6</sup>

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<sup>6</sup> The Investigative Team did not further assess the Threat in making determinations regarding whether the administration or Board violated RSU 21 policies related to this matter because the Investigative Team found that the evidence was insufficient to find that the Threat was based on race.

## **B. Confederate Flag Incident**

### **1. Wearing and Videotaping of Confederate Flag in Teacher A's Classroom, March 17, 2016**

Based on interviews and documentation, on March 17, 2016, before the start of Teacher A's first period world history class, Student B, Student C, and Student D walked through the door of Teacher A's classroom, and Student B was wearing a large Confederate flag<sup>7</sup> draped across his back with the word "Redneck" written down the center of the flag, while Student D videotaped the incident and broadcast it on social media (the "Confederate Flag Incident").<sup>8</sup>

Based on interviews, the Confederate Flag Incident occurred on "America Day" which was during "Spirit Week" at KHS. Based on interviews, Spirit Week occurs in March, and on America Day, students dress in red, white, and blue.

Based on interviews, after Student B entered Teacher A's classroom with the Confederate flag, Teacher A told Student B to remove the flag, which he did, and she then walked with Student B to the main office. Teacher A stated that no administrator was available to speak with her. Teacher A stated that she explained to Student B the implication of the Confederate flag and its meaning to her.<sup>9</sup>

Based on documentation, Teacher A emailed [REDACTED] on March 17, 2017 at 8:33 a.m. to inform [REDACTED] that that morning, she had asked Student B to remove his "Redneck Confederate flag" that he was wearing, and that she had explained to Student B that she found the flag to be offensive.<sup>10</sup>

[REDACTED] said that Teacher A spoke with [REDACTED] after school on the day of the Confederate Flag Incident and told [REDACTED] she felt like she had "dealt" with the incident when [REDACTED] told her [REDACTED] would follow up on the incident. In contrast, Teacher A said that on the day of the Confederate Flag Incident, "there was no conversation" between her and [REDACTED].

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<sup>7</sup> Based on information from interviews, the Confederate flag was understood as a racist symbol by Teacher A and others.

<sup>8</sup> Teacher A described that when she first saw the flag during the Confederate Flag Incident, she felt "paralyzed" and "attacked." Teacher A said that seeing the flag led her to feel the students were communicating that they were "better than" Teacher A and "remind[ing her] of [her] place." Teacher A said that she "had to go on teaching" and maintain her composure. Teacher A described that it "hurt even more" when she realized that a video of the incident had been distributed among students. Teacher A said that the video distribution made her feel like the Confederate Flag Incident was "targeted" and "orchestrated," and she realized "there were other victims in the wake [ . . . ]."

<sup>9</sup> Teacher A explained to the Investigative Team the meaning of the Confederate flag to her and said that her parents are from the South and grew up in the Jim Crow era. Teacher A said that her father would tell her about the Confederate flag and that to him the flag was designed to remind you to stay in your place.

<sup>10</sup> Documentation indicated that [REDACTED] responded to Teacher A's March 17 email the following day, after receiving further email communication from Teacher A.

## 2. March 18, 2016

Based on interviews and documentation, Teacher A received an email on March 18, 2016 from a student, Jane Doe,<sup>11</sup> informing Teacher A that Jane Doe had seen “the video” of the “boys who brought the Confederate flag to [Teacher A’s] room yesterday” and that the same students had “paraded that same flag in front of [Jane Doe] last year during spirit week.”

Based on documentation, Jane Doe sent Teacher A the above referenced email at 3:13 p.m., and Teacher A forwarded the email to the Principal (and included Assistant Principal B on the email) at 3:37 p.m., writing in part, “I do not know this young person and I do not know to which video he/she is referring to. I emailed [REDACTED] about the Confederate flag incident in my classroom to which I received no response.” In this email, Teacher A also asked the Principal if they could meet on Monday to discuss “the incident and this email.”

At 3:42 p.m., [REDACTED] responded to Teacher A’s 3:37 p.m. March 18 email, cc’ing the Principal. In this email, [REDACTED] wrote that [REDACTED] thought Teacher A handled the Confederate Flag Incident well and that [REDACTED] thought it “was taken care of.” [REDACTED] wrote that [REDACTED] had spoken with “the young man at the end of the day,” and that [REDACTED] was willing to meet with Teacher A the following week.

At 5:50 p.m., Teacher A responded to [REDACTED], and [REDACTED]. In this email, Teacher A asked a number of questions, asking, for example, whether there was a video, what was on the video, who was in the video, who recorded it, whether the video was on the Internet, whether the incident was “targeted,” and whether the incident was “a planned incident to terrorize” Teacher A. Teacher A also asked questions about Jane Doe, including whether Jane Doe was “African American like [Teacher A],” whether a similar incident had occurred to her the previous year and concluded the email by writing, “I believe the incident, in light of this student’s email warrants further investigation.” At 5:58 p.m., [REDACTED] responded to Teacher A, writing, “All good questions. We will talk on Monday. There will be further investigation.”

[REDACTED] said that on March 18, 2016, as [REDACTED] was headed to a KHS dance, [REDACTED] received a call at 6:00 p.m. or 6:30 p.m. from Teacher A. [REDACTED] said that Teacher A told [REDACTED] that Jane Doe had contacted Teacher A, that someone had videotaped the Confederate Flag Incident, and that Teacher A referenced Snapchat. [REDACTED] stated that while at the dance, she told [REDACTED] that Teacher A had called and that there was a new development regarding the Confederate Flag Incident.

Based on documentation, Teacher A sent an email to Jane Doe at 6:06 p.m., asking Jane Doe to send Teacher A a link to the video of the Confederate Flag Incident.

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<sup>11</sup> Jane Doe said that she identifies as black.

### 3. Reporting of Confederate Flag Incident by Teacher A to the SRO, March 21, 2016

Based on interviews and documentation, Teacher A reported the Confederate Flag Incident to [REDACTED] on March 21, 2016. [REDACTED] and Teacher A each stated that [REDACTED] told Teacher A that [REDACTED] would investigate the matter.

Based on documentation, [REDACTED] contacted Jane Doe about the Confederate Flag Incident on March 21, 2016. In an email from Jane Doe to Teacher A on March 21, Jane Doe wrote that [REDACTED] had called her that morning and that she had spoken with [REDACTED] about the video that she viewed on Snapchat. Jane Doe wrote that she did not have access to the video because it expired on Snapchat.

### 4. KHS Administration's Response to Confederate Flag Incident, March 22, 2016

#### a. Review of Surveillance Tape

Based on information from [REDACTED] and [REDACTED], they reviewed the surveillance tape from outside Teacher A's classroom from the day of the Confederate Flag Incident. [REDACTED] and [REDACTED] indicated that in the surveillance tape, Student B had the Confederate flag and Student D was videotaping. [REDACTED] stated that he observed in the surveillance tape that Teacher A left the classroom with Student B and the flag.

#### b. Interviews of Students Involved in Confederate Flag Incident

Based on interviews and documentation, [REDACTED] interviewed Student B, Student C, and Student D regarding the Confederate Flag Incident.

**Student B:** [REDACTED] said that [REDACTED] interviewed Student B who told [REDACTED] that Student B wanted to wear an American flag for America Day, and that another student gave him the Confederate flag that he wore into Teacher A's classroom.<sup>12</sup> According to [REDACTED], Student B told [REDACTED] that he was not aware that the incident had been videotaped.

**Student C:** [REDACTED] stated that [REDACTED] interviewed Student C but that Student C did not provide answers to his inquiries about the incident.

**Student D:** [REDACTED] said that [REDACTED] spoke with Student D and determined that Student D posted a video on Snapchat of the Confederate Flag Incident and then deleted it. According to [REDACTED], when [REDACTED] interviewed Student D, Student D already had deleted the video because when Teacher A told Student B to remove the flag, Student D went to Educational Technician B who explained why Teacher A told Student B to remove the flag.<sup>13</sup> [REDACTED]

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<sup>12</sup> [REDACTED] also stated that Student B told [REDACTED] who gave Student B the Confederate flag, and stated that [REDACTED] did not speak with that student about the Confederate Flag Incident.

<sup>13</sup> Educational Technician B said that she was not aware that there was a video of the Confederate Flag Incident until her child who was a student said that she saw a video on Snapchat. Educational Technician

██████████ stated that ██████ “went through” Student D’s telephone and the photos on his telephone and that “there was nothing there.”<sup>14</sup>

██████████ stated that ██████ determined Student C told Student D to record the video of Student B entering Teacher A’s classroom with the Confederate flag.

5. Meeting Between Jane Doe, ██████████, and Jane Doe’s Parent, March 2016

Based on interviews, ██████████ met with Jane Doe about the Confederate Flag Incident. ██████████ stated that ██████ recalled speaking with Jane Doe and her parent and that Jane Doe showed ██████ the video of the Confederate Flag Incident, but that ██████ did not recall when this occurred.<sup>15</sup> ██████████ stated that ██████ was “pretty sure” that Jane Doe and her parent initiated this meeting.

██████████ stated that ██████ viewed the video of the Confederate Flag Incident and described that ██████ saw a couple of students come in and sit down, one of the students had a telephone and another student had the flag, and Teacher A went up to the student with the flag and they exited the classroom.<sup>16</sup> ██████████ stated that ██████ was able to see the students and the flag in the video. ██████████ stated that ██████ did not have a copy of the video.

██████████ said that ██████ did not know how broadly the video had been distributed and said, “That is one thing that I don’t think we really looked into.”

6. Meeting between Teacher A and KHS Administrators, March 22, 2016

Based on interviews, on March 22, 2016, Teacher A had a meeting with the ██████████ ██████████ and ██████████ about the Confederate Flag Incident. Teacher A said that during the meeting, ██████████ said that ██████ had interviewed Student B, Student C, and Student D, and that ██████████ would suspend them.

Teacher A stated that ██████████ said ██████ had interviewed Jane Doe about the video, but that the images Jane Doe had seen on Snapchat were “blurry” and it was not possible to make out what they showed.

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B said that her child told her the video was of students taping Teacher A’s reaction to the Confederate Flag Incident. Educational Technician B said that she was never asked by KHS administration about the video and that she did not speak with ██████████ about the Confederate Flag Incident.<sup>14</sup> ██████████ said that ██████████ met with Jane Doe and “confirmed” that there was a video of the Confederate Flag Incident.

<sup>15</sup> ██████████ stated that during this meeting, Jane Doe and her parent talked about the general climate for Jane Doe and brought up a number of incidents, including some that had occurred at the middle school.

<sup>16</sup> Jane Doe said that she shared with ██████████ her observations of Student D’s video of the Confederate Flag Incident and that she also shared with ██████ a screenshot she took of Student B wearing the Confederate flag and Student E holding up his middle finger.



7. Meeting between Teacher A and [REDACTED], March 22, 2016

Teacher A said that after meeting with the administrators, she spoke with [REDACTED] and told [REDACTED] that the administrators had explained that they had spoken with the students involved in the Confederate Flag Incident. [REDACTED] said that when [REDACTED] met with Teacher A, she told [REDACTED] that she felt good about the school's response as reported to her in the meeting with the administrators.

8. Conversations between Teacher A and Jane Doe, March 22, 2016

Based on interviews and documentation, on March 22, 2016, after meeting with the KHS administrators, Teacher A called Jane Doe about the Confederate Flag Incident. Based on interviews and documentation, during the call between Teacher A and Jane Doe, Jane Doe provided Teacher A with information including what Jane Doe saw on video of the Confederate Flag Incident, the names of the students in the video, that the video was captioned, "Bringing it to [Teacher A]," and the names of the students involved in a prior Confederate flag incident with Jane Doe.

Based on interviews and documentation, during the telephone call with Teacher A, Jane Doe explained that she had been able to take a screenshot of a picture posted on Snapchat of the Confederate Flag Incident, that included Student B wearing the Confederate flag and Student E holding up his middle finger (the "Screenshot").

Based on interviews, Teacher A's spouse went over to Jane Doe's house that evening and got a copy of the Screenshot and spoke with both Jane Doe and her parent about the Confederate Flag Incident. Based on interviews, during the meeting with Jane Doe, Jane Doe's parent, and Teacher A's spouse, Jane Doe told Teacher A's spouse that she had faced racism and discrimination at RSU 21 by other students.<sup>17</sup>

9. Investigation by [REDACTED] of the Confederate Flag Incident, for a Week or Several Weeks after the Incident

[REDACTED] said that [REDACTED] investigated the Confederate Flag Incident for "upwards of a week to several weeks." [REDACTED] stated that as part of [REDACTED] investigation, [REDACTED] interviewed Teacher A and spoke with [REDACTED]. [REDACTED] said that [REDACTED] did not interview students as part of [REDACTED] investigation.<sup>18</sup> [REDACTED] stated that [REDACTED] assumed [REDACTED] spoke with the educational technician who

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<sup>17</sup> Jane Doe informed the Investigative Team that while she was in eighth grade, during Spirit Week Student B and Student D entered her classroom with a Confederate flag. Jane Doe's parent said that the word "Redneck" was written on the Confederate Flag. Jane Doe and Jane Doe's parent said that they reported the incident to the school on numerous occasions and that no action was taken. [REDACTED] said that [REDACTED] was aware that Jane Doe "had some issues at the middle school" during Spirit Week in middle school. [REDACTED] said that when [REDACTED] spoke with Jane Doe's parent related to the Confederate Flag Incident, Jane Doe brought up an incident that had occurred during Spirit Week in middle school. [REDACTED] noted that [REDACTED] did not remember the details of the incident.

<sup>18</sup> Teacher A said that she provided [REDACTED] with the names of the "two other girls" identified by Jane Doe as having seen the video.

was present for the Confederate Flag Incident, but did not recall doing so. ██████ stated that “maybe” █ spoke with ██████. ██████ stated that █ did not recall if █ spoke with any parents as part of █ investigation. ██████ stated that █ viewed a screenshot of a student with a flag around their body, but did not recall if █ saw others in the screenshot.

#### 10. Reporting of Confederate Flag Incident by ██████ to the State Attorney General’s Office

Based on interviews, ██████ contacted the state about the Confederate Flag Incident. ██████ said that █ would contact the Attorney General’s Office “for informational reasons” if █ felt a crime, based on race, religion, or civil rights violations, had occurred. ██████ said that █ reported the Confederate Flag Incident to the Attorney General’s Office in March 2016.

#### 11. Strategic Planning Meeting, March 23, 2016

Based on interviews, on March 23, 2016 there was a meeting at KHS to review the five-year strategic plan for KHS. Based on interviews, before the meeting started, Teacher A and Teacher A’s spouse came into KHS and approached ██████. Teacher A stated that she approached ██████ and asked ██████ if █ had heard what had happened to Teacher A with regard to the Confederate Flag Incident, and that ██████ said that █ could not talk right then. ██████ said that Teacher A approached ██████ and Teacher A said that she wanted to read a statement about safety. ██████ said that █ believed Teacher A was tying the safety issue to the Confederate Flag Incident.

Teacher A said that when she was talking to ██████, Teacher A was “emotional” but was “very much respectful.” ██████ described that Teacher A was “upset” and was “escalated and concerned.” ██████ estimated that this interaction lasted 30 seconds, and indicated that then the strategic planning meeting went on as scheduled. ██████ said that Teacher A was “very angry” when she approached ██████. ██████ noted that Teacher A stated that she had a statement to read, and ██████ assumed this was about the Confederate Flag Incident. ██████ described that this interaction lasted “at most” one minute. ██████ indicated that the interaction involved ██████, Teacher A, and Teacher A’s spouse, and that others did not stop what they were doing to look at what was happening.

#### 12. Meeting Between Teacher A, KHS Administrators, ██████, and Teacher A’s Spouse, March 23, 2016

Based on interviews, after Teacher A approached ██████ invited Teacher A and Teacher A’s spouse to a conference room to discuss the matter (the “March 23 Meeting”). Based on interviews, Teacher A, Teacher A’s spouse, ██████ and ██████ were at the March 23 Meeting.

Teacher A said that during the March 23 Meeting, she showed [REDACTED] the Screenshot and said, “I don’t see how this is blurry in any way.”<sup>19</sup> Teacher A stated that during the March 23 Meeting, she also said to [REDACTED] that Student E was in the Screenshot with his middle finger up, and that Teacher A felt Student E needed to be interviewed.

Based on interviews, after the March 23 Meeting, Teacher A did not attend the strategic planning meeting, left school, and did not teach that day. Teacher A said that after the March 23 Meeting, [REDACTED] told Teacher A, “[I]t’s been an exhausting day so you should go home,” and that Teacher A went home and did not teach that day. [REDACTED] said that [REDACTED] helped Teacher A “get substitute plans together.”

[REDACTED] said that after the March 23 Meeting, [REDACTED] learned from [REDACTED] about the Confederate Flag Incident, about Teacher A’s concerns, and about the school’s response.

### 13. Jane Doe’s Panic Attack

Jane Doe said that after the Confederate Flag Incident, when she returned to school, she had a class with Student B and she was scared to see him, started to have a panic attack, and went to the nurse’s office. Jane Doe said that while there, [REDACTED] came in and asked her questions about the Confederate Flag Incident. Jane Doe stated that [REDACTED] brought Jane Doe to a conference room with [REDACTED] and [REDACTED], and that they asked her questions. Jane Doe said that she was unable to answer the questions because she was hyperventilating. Jane Doe said that at the meeting, she shared the Screenshot.

### 14. Meeting with Jane Doe, KHS Administrators, [REDACTED], and Jane Doe’s Parent, March 23, 2016

Based on documentation, Jane Doe’s parent and Jane Doe met with the [REDACTED] [REDACTED] and [REDACTED] on March 23, 2016.

Jane Doe’s parent said that she and Jane Doe met with the [REDACTED] [REDACTED], and [REDACTED], and that during the meeting Jane Doe’s telephone was passed around so that everyone at the meeting could view the Screenshot. Jane Doe’s parent stated that during this meeting, Jane Doe and Jane Doe’s parent discussed incidents of racial harassment against Jane Doe at the middle school. Jane Doe’s parent stated that the Confederate Flag Incident was connected to the incident at the middle school because it was the same students and the same flag.

### 15. Meeting between Teacher A and [REDACTED]

Based on interviews and documentation, at some point after Teacher A became aware of the video of the Confederate Flag Incident, she met with [REDACTED] again and told [REDACTED] that she wanted to pursue the matter. Based on interviews, during the meeting with Teacher A, [REDACTED]

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<sup>19</sup> The Investigative Team reviewed the Screenshot depicting Student B and Student E and noted that the contents of the picture were clearly visible.

responded that ■ had filed a report with the state Attorney General's office. According to Teacher A she then learned that the students involved in the Confederate Flag Incident were suspended. She stated that Student B and Student D did not come back to her class until ■ "got ■ report back from the state."

16. Student Discipline Related to the Confederate Flag Incident, March 22, 2016 through March 24, 2016

Based on interviews and documentation, the students involved in the Confederate Flag Incident were disciplined for the incident. PowerSchool records for the relevant students reflected that, related to the Confederate Flag Incident, Student B received a two-day in-school suspension, Student C received a one-day in-school suspension, and Student D received a three-day out-of-school suspension.

17. Restorative Justice Circle, March 2016

Based on interviews, before the students could return to class after their suspensions, Teacher A participated in restorative justice with Student B, Student D, the SRO, and Assistant Principal A. Based on interviews, during the restorative justice circle, Teacher A spoke about what the flag meant to her. Teacher A stated that Student D said he had a better understanding of what he did and why it was wrong, and that Student B "pretty much agreed with what [Student D] was saying." Teacher A further said that she believed that the students said they were sorry.

Assistant Principal A said that he conducted a restorative justice circle with Student B and Teacher A. Assistant Principal A stated that there also was a restorative justice circle with Student D and Teacher A. Assistant Principal A stated that the SRO was present during the restorative justice circles. Assistant Principal A said that during the restorative justice circles, Teacher A explained what the Confederate flag meant to her and the meaning behind the flag. Assistant Principal A said that both students made a "heartfelt" apology to Teacher A.

The SRO stated that he participated in a restorative justice circle, in connection with the Confederate Flag Incident, with Assistant Principal A, Teacher A, and a student. The SRO stated that as part of the restorative justice circle, the student "recognized his actions" which had caused Teacher A "fear" or "uncomfortableness."

18. Report from State Attorney General's Office

Teacher A and ■ indicated that ■ received a report back from the state Attorney General's Office, and that the report indicated that the Confederate Flag Incident did not constitute a civil rights violation. ■ stated that ■ shared "what the report said" with the school and with Teacher A.

19. Comments by Students in Teacher B's Class, A Few Day after the Confederate Flag Incident

Teacher B, an English teacher at KHS, said that she learned of the Confederate Flag Incident from her students, "a few days after" the Confederate Flag Incident. She said that she was leading a discussion about the book, "To Kill a Mockingbird," and one of her students told her about the Confederate Flag Incident. The students in her class, she said, were upset and perceived that nothing was happening to address the incident.

20. Faculty Meeting, March 30, 2016

Based on documentation, the Confederate Flag Incident was discussed during a March 30, 2016 faculty meeting. Based on interviews, during this faculty meeting, Teacher A shared with the faculty what the Confederate flag meant to her and talked about starting a civil rights team.

21. ██████████ Involvement in the Confederate Flag Incident

Based on interviews, the ██████████ was RSU 21's ██████████ beginning in the 2015-2016 school year. ██████████ said that ██████████ was not involved in the investigation of the Confederate Flag Incident or otherwise in the school's response to the incident. ██████████ said that ██████████ did not communicate with ██████████ about the Confederate Flag Incident and was not asked to investigate the incident. ██████████ said ██████████ did not recall who first told ██████████ of the incident.

Based on documentation and interviews, Staff Member A spoke with ██████████, on or about April 1, 2016 to suggest that ██████████ reach out to Teacher A following the Confederate Flag Incident. In an email dated April 1, 2016, ██████████ wrote to Staff Member A that ██████████ did not feel it was appropriate to "interject" and was confident that the KHS administration was addressing the situation.

22. Impact of the Confederate Flag Incident on Teacher A

Teacher A said that the Confederate Flag Incident had a "huge" impact on her. Teacher A said that the situation was stressful and exhausting. Teacher A said that her relationship with the students involved in the Confederate Flag Incident, when she saw them in the hallway, "was never the same," and seeing them made her nervous.

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Based on the totality of information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that:

1. On Thursday, March 17, 2016, Student B, Student C, and Student D walked through the door of Teacher A's classroom. Student B was wearing a large Confederate flag draped across his back with the word "Redneck" written down the center of the flag, while

Student D videotaped Student B entering Teacher A's classroom with the Confederate Flag and broadcasted it on social media via Snapchat.

2. By email, on March 17, 2016, Teacher A informed [REDACTED] that Student B had entered her class earlier that morning wearing a Confederate flag as a cape, and noted that she told Student B that she found the Confederate flag to be offensive.
  - a. The information was insufficient to find that Teacher A told [REDACTED] that she had "dealt" with the Confederate Flag Incident when [REDACTED] told her that [REDACTED] would follow up on the incident.<sup>20</sup>
3. Students at KHS were aware of the Confederate Flag Incident and the video posted on Snapchat by Student D.
4. Jane Doe took a Screenshot of the Confederate Flag Incident posted on Snapchat by Student D which depicted Student B wearing the Confederate Flag with the words "Redneck" written on the flag, and Student E with his middle finger raised standing in front of the flag. The contents of the Screenshot were clearly visible based on a review by the Investigative Team.
5. By email on Friday, March 18, 2016 to [REDACTED], Teacher A reported the Confederate Flag Incident, including that there was a video of the incident. On March 18, 2016, Teacher A, in an email to [REDACTED], asked if there was a video of the incident, if she was targeted or if the incident was planned to terrorize her, referenced her race and asked about the race of Jane Doe, and wrote that Teacher A believed the Confederate Flag Incident warranted further investigation. [REDACTED] responded, "There will be further investigation."
6. [REDACTED] did not investigate the Confederate Flag Incident.
7. On March 21, 2016, Teacher A reported the Confederate Flag Incident to [REDACTED].
8. [REDACTED] conducted an investigation of the Confederate Flag Incident. As part of [REDACTED]'s investigation, [REDACTED] spoke with Teacher A, Jane Doe, and [REDACTED] B.
9. Jane Doe shared the Screenshot with Teacher A, with [REDACTED] and with [REDACTED].
10. In [REDACTED] investigation of the Confederate Flag Incident, [REDACTED] did not speak with any students, other than Jane Doe, and did not speak with Educational Technician B.
11. [REDACTED] contacted the state Attorney General's Office to report the Confederate Flag Incident.
12. On March 22, 2016, [REDACTED] reviewed the school surveillance tape from outside Teacher A's classroom on the day of the Confederate Flag Incident and saw student B enter Teacher A's classroom wearing a Confederate Flag and Student D videotaping.
13. On or about March 22 through March 24, 2016, [REDACTED] interviewed Student B, Student C, and Student D about the Confederate Flag Incident. [REDACTED] did not interview Student E about the Confederate Flag Incident.
14. Student B, Student C, and Student D received suspensions related to the Confederate Flag Incident.
15. In March 2016, Teacher A participated in either one or multiple restorative justice circles with Student B, Student D, Assistant Principal A, and the SRO.

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<sup>20</sup> Teacher A and [REDACTED] disagreed about whether Teacher A said this. No documentation supported one of their accounts over the other, and neither of these Interviewees was more credible than the other on this issue.

16. At the start of the strategic planning meeting on March 23, 2016, Teacher A approached [REDACTED] to discuss the Confederate Flag Incident. The interaction between Teacher A and [REDACTED] was short, lasting approximately 30 seconds to one minute.
17. After the March 23 Meeting, Teacher A did not attend the strategic planning meeting, left school, and did not teach that day.
18. The students involved in the middle school Confederate flag incident with Jane Doe were the same students involved in the Confederate Flag Incident.

### **C. Request from the Education Foundation for Funding for Books**

Based on interviews and documentation, the KHS Climate and Diversity Committee (the “Committee”) submitted an application dated May 17, 2016 (the “Application”) to the Education Foundation of Kennebunks and Arundel (the “Education Foundation”), to purchase copies of a book, *The Other Wes Moore*, for students for a community read.

The Application listed Teacher B as the Committee leader, and included the names of 14 other individuals on the Committee, including Teacher A. Teacher B was listed as the contact individual on the Application.

[REDACTED] and [REDACTED] provided different explanations regarding who approved requests for funding made to the Education Foundation, with [REDACTED] stating that [REDACTED] and [REDACTED] determined which requests to approve, and with [REDACTED] describing a multi-step approval process, which did not require approval by her.

Based on interviews, the funding requested in the Application was denied. Interviewees provided the following information regarding the denial, a meeting about the denial, and Teacher A’s reaction to the denial:

- Teacher B told the Investigative Team that in or around May 2017, she learned that the Education Foundation had not approved the funding. Teacher B stated that in response to an email that she sent to [REDACTED] and [REDACTED] about this, [REDACTED] wrote that [REDACTED] had screened the Application and had not given it to the Education Foundation.<sup>21</sup> Teacher B stated that she met with [REDACTED] and [REDACTED] about this, and that Teacher C also was present. Teacher B described the meeting as “relatively hostile.” Teacher B stated that sometime during the week that she found out about the denial, she told Teacher A, whose reaction was “even-keeled.”
- [REDACTED] stated that the [REDACTED] did not approve the request in the Application for funding for the books. [REDACTED], when asked if the grant request went to [REDACTED], stated, “I don’t approve or disapprove the grants.” [REDACTED] described that [REDACTED] participated in a meeting with Teacher B and [REDACTED] about the denial of the

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<sup>21</sup> The Investigative Team noted that Teacher B’s recollection was similar to a May 25, 2016 email to Teacher B in which [REDACTED] wrote, “[L]et me clarify that the grants must be first approved by me prior to going to the Ed Foundation. I am the one who did not approve this grant.”

request. ██████ stated that ██████ did not think that Teacher A was at this meeting.

- ██████ stated in an interview that Teacher A was present at a meeting when ██████ denied the funding for the books, and described the communication between ██████ and Teacher A as “challenging.” ██████ stated that the interaction between ██████ and Teacher A regarding the book was an example of emotions escalating, later referred to in Teacher A’s 2016-2017 evaluation.<sup>22</sup> See Section IV.E.2.b. ██████ in one interview indicated that ██████, Teacher B, and Teacher C were at this meeting. In another interview, ██████ stated that Teacher A was at the meeting. In a different interview, ██████ expressed both that Teacher A was present and that ██████ was not sure if Teacher A was present.
- Teacher C stated she was present at a meeting with Teacher B, ██████, and ██████ during which the denial of the request for funding for the books was discussed, and that in this meeting Teacher C learned that ██████ had stopped the request from going to the Education Foundation. Teacher C stated that Teacher B was angry at the meeting.

Several Interviewees spoke generally about Teacher A’s involvement in the request for funding for the books. Teacher A stated that she was not involved in the request for funding for the books, learned about the denial of the request from Teacher B, and never discussed the denial with ██████ or ██████. ██████, when asked by the Investigative Team in one interview whether ██████ spoke about Teacher A’s reaction to the issue regarding the funding for the books, stated, “I don’t think so. I don’t remember [Teacher A] being involved in that.” ██████ consistently indicated in ██████ interviews that ██████ did not believe that Teacher A was involved in the book funding request. Teacher D indicated that the book proposal was Teacher B’s initiative and that Teacher A was not involved.

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Based on the totality of information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that:

1. Teacher B applied for funding through the Education Foundation in May 2017 for copies of a book, *The Other Wes Moore*.
2. Teacher A was on the Committee but was not involved in the request for funding for the books.<sup>23</sup>

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<sup>22</sup> ██████, signed an affidavit related to the Complaint that indicated, “[Teacher A]’s emotions escalated when another teacher was upset about the denial of a grant request for books. I believed that this incident related to ██████ ██████.”

<sup>23</sup> In making this finding of fact, the Investigative Team considered the following: Teacher A’s account that she was not involved with the request for funding for books was supported by the accounts by ██████ and Teacher D, and by Teacher B’s and Teacher C’s account that Teacher A was not at the meeting with ██████ during which the denial was discussed. The Investigative Team was concerned regarding the credibility of ██████ on this issue as ██████ was internally inconsistent with



3. A meeting occurred regarding this denial, and the [REDACTED], [REDACTED], Teacher B, and Teacher C were the only individuals present at this meeting.

#### **D. The Civil Rights Team Letter**

##### **1. The KHS Civil Rights Team, Generally**

Based on the Maine Office of the Attorney General website, the Civil Rights Team Project is a program designed by that office to reduce bias-motivated behaviors and harassment in schools. The Civil Rights Team Project expectations included having civil rights teams at schools to engage their communities around civil rights issues, and to respond to major public incidents of bias.

Based on interviews, Teacher A established a civil rights team at KHS (the “KHS Civil Rights Team”) during the fall of 2016. Information provided during this investigation indicated that Teacher A and Teacher E<sup>24</sup> were the two advisors of the KHS Civil Rights Team.

##### **2. Drafting of the Civil Rights Team Letter, on or around March 13, 2017**

Documentation reflected that in an email dated February 1, 2017, the Civil Rights Team Project notified Teacher A of a racial bias incident involving Casco Bay High School students.<sup>25</sup> In this email she also was provided with a list of actions that civil rights teams could take such as informing the Casco Bay High School community that the KHS Civil Rights Team rejected racism and hate, and stood in solidarity with Casco Bay students.

Based on documentation, on March 13, 2017, Teacher A sent an email to [REDACTED] that contained a letter that the KHS Civil Rights Team had written to support the Casco Bay High School Civil Rights Team (the “CRT Letter”), and a draft of an email that Teacher A proposed sending to offer KHS faculty and students the opportunity to sign the CRT Letter. The CRT Letter indicated in part that the KHS Civil Rights Team, its advisors, and KHS students and faculty “condemn[ed]” the “racially motivated incident that happened near” Casco Bay High School. Information from interviews with Teacher A and [REDACTED] indicated that [REDACTED] responded ““good”” to Teacher A in response to the CRT Letter.

##### **3. Conversation between [REDACTED] and [REDACTED] Regarding the CRT Letter, and Subsequent Communication with Teacher A and Teacher E, March 13, 2017**

Based on interviews, on March 13, 2017, [REDACTED] and [REDACTED], discussed that the CRT Letter was written on RSU 21 letterhead, and they agreed that the letter could not be sent

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regard to whether Teacher A was at the meeting when the funding was denied, and also provided information inconsistent with others regarding Teacher A’s involvement on this issue.

<sup>24</sup> The Investigative Team was unable to interview Teacher E.

<sup>25</sup> News articles reflected that on January 27, 2017, a white man allegedly yelled racial slurs at black Casco Bay High School students, and assaulted two students who came to the defense of the other students.

on the letterhead. [REDACTED] indicated that she asked [REDACTED] whether the CRT Letter could be sent without school letterhead, or on KHS Civil Rights Team letterhead.<sup>26</sup>

Documentation reflected that in an email sent on March 13, 2017, [REDACTED] wrote to Teacher A and to Teacher E that she had “been asked to ask you not to send [the CRT Letter].”

4. Meeting with [REDACTED] about the CRT Letter and Follow-up Email, March 21, 2017 and March 22, 2017

Based on documentation and interviews, on March 21, 2017, a meeting was held with [REDACTED] Teacher A, Teacher E, and the advisors for two other clubs (the “March 2017 Meeting”). The written agenda for the March 2017 Meeting indicated that a goal of the meeting was to “clarify process and procedures to lead to better collaboration and communication.” Based on interviews, in the March 2017 Meeting: 1) Teacher A and [REDACTED] discussed [REDACTED] refusal to permit the KHS Civil Rights Team to send the CRT Letter; 2) [REDACTED] agreed to Teacher A’s request that [REDACTED] put [REDACTED] determination into writing; and 3) [REDACTED] expressed [REDACTED] belief that too much time had passed following the Casco Bay incident to warrant sending the CRT Letter. Teacher A, [REDACTED], and Teacher C each described understanding from the meeting that [REDACTED] believed that [REDACTED] was the only person who could send communication on RSU 21 letterhead (which [REDACTED] and Teacher C each expressed was not consistent with their past experiences).

Specific to [REDACTED] and [REDACTED] actions in the March 2017 Meeting, the following information was gathered by the Investigative Team:

- [REDACTED] **Actions:** Teacher A, but no other Interviewee, reported that [REDACTED] was “yelling” during the encounter. [REDACTED] described [REDACTED] as “adamant,” and Teacher C said that [REDACTED] was “firmer” than normal with a “flat affect” during the meeting.
- [REDACTED] **Actions:** [REDACTED], but no other Interviewee, said that [REDACTED] stood over [REDACTED] “pointing her finger and yelling at” [REDACTED] and [REDACTED]. [REDACTED] said that [REDACTED] appeared [REDACTED] and was “raising [REDACTED] voice” to [REDACTED]. [REDACTED] and Teacher C each reported that [REDACTED] was calm during this meeting and did not yell. Teacher C described that [REDACTED] appeared “incredulous” and sought from [REDACTED] an answer about the CRT Letter that “made sense.” In a document dated on March 30, 2017, Teacher C wrote that [REDACTED] was “passionate and proactive” and “respectful but direct” in her questioning of why KHS or RSU 21 could not support the CRT Letter. Teacher F said that after the meeting, Teacher E had told her that [REDACTED] perceived [REDACTED] as “out of line” but that [REDACTED], not [REDACTED] had been “out of line.”<sup>27</sup>

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<sup>26</sup> No information gathered in this investigation indicated that at the time the KHS Civil Rights Team had its own letterhead.

<sup>27</sup> No other Interviewee indicated that [REDACTED] had been “out of line.” Teacher C described that in this meeting, [REDACTED] did not speak much and did not raise [REDACTED] voice or become emotional.

Based on documentation, on March 22, 2017, Teacher A and Teacher E, in an email from Teacher A, wrote to [REDACTED], asking [REDACTED] to put in writing [REDACTED] decision regarding the KHS Civil Rights Team's "ability to send a letter of support to the Civil Rights Team of Casco Bay High School." [REDACTED] responded via email to Teacher A that [REDACTED] [REDACTED] not put something in writing because [REDACTED] was "not comfortable" that [REDACTED] would accurately convey [REDACTED] reasoning to the students of the KHS Civil Rights Team. [REDACTED] referenced [REDACTED] "heightened emotions / behavior paired with [REDACTED] difficulty understanding [REDACTED] points around processes for external communications."

#### 5. Sending of the CRT Letter, April 4, 2017

Based on interviews, [REDACTED] met with the KHS Civil Rights Team. [REDACTED] [REDACTED] but no other Interviewee, said that [REDACTED] gave permission in this meeting for the KHS Civil Rights Team to put the CRT Letter on RSU 21 letterhead. Teacher A, [REDACTED], and Board Member A said that [REDACTED] agreed in the meeting for the KHS Civil Rights Team to send the CRT Letter without any letterhead. Teacher F said that she recalled that [REDACTED] gave permission to send the CRT Letter but did not recall whether it could go on letterhead.

Documentation reflected that on April 4, 2017, the KHS Civil Rights Team sent the CRT Letter on plain paper, without letterhead.

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Based on the totality of the information gathered during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that:

1. The KHS Civil Rights Team wrote the CRT Letter which indicated that the KHS students and faculty "condemn[ed]" the "racially motivated incident that happened near" Casco Bay High School. The CRT Letter did not address Casco Bay High School's response to the racial bias incident.
2. On March 13, 2017, Teacher A gave a copy of the CRT Letter to [REDACTED] and [REDACTED]. [REDACTED] responded positively to Teacher A about the CRT Letter.
3. On March 13, 2017, [REDACTED] and [REDACTED] discussed the CRT Letter, and in their discussion, [REDACTED] and [REDACTED] agreed that the CRT Letter could not be sent on letterhead.
4. On March 13, 2017, [REDACTED] sent an email to Teacher A indicating that [REDACTED] had "been asked to ask you not to send" the CRT Letter.
5. On March 21, 2017, a meeting was held with [REDACTED], [REDACTED], Teacher A, Teacher E, and the advisors for two other clubs, during which Teacher A and [REDACTED] discussed the [REDACTED] refusal to permit the KHS Civil Rights Team to send the CRT Letter.
6. In the March 21, 2017 meeting, the [REDACTED] led other meeting participants to understand that [REDACTED] thought that [REDACTED] was the only person who could send communication on RSU 21 letterhead, and refused to allow the KHS Civil Rights Team to send the CRT Letter.

7. On March 22, 2017, Teacher A and Teacher E wrote an email to [REDACTED] in which they asked [REDACTED] to state [REDACTED] decision regarding the CRT Letter in writing. [REDACTED] replied to the email, indicating that [REDACTED] would not put her decision in writing and referenced [REDACTED] heightened emotions.
8. On April 4, 2017, the KHS Civil Rights Team sent the CRT Letter on plain paper, without letterhead.

#### **E. Teacher A's 2016-2017 Summative Evaluation**

##### **1. Evaluations, Generally**

RSU 21's policy on evaluations indicated that the formal evaluations for probationary teachers "normally" are completed before May 1. A document titled, the Educator Performance Evaluation and Professional Growth System, dated February 2016, indicated that probationary teachers receive a summative evaluation once per year, due on May 15.

Based on documentation, the RSU 21 evaluation form pertinent to the time relevant to this investigation included ratings for four "domains" (referred to individually as "Domain" and collectively as "Domains"), with subdomains within each Domain (referred to individually as "Subdomain" and collectively as "Subdomains"), and "indicators" within each Subdomain (referred to individually as "Indicator" and collectively as "Indicators"). Documentation indicated that Domain 1 was "Planning and Preparation," Domain 2 was "Classroom Environment," Domain 3 was "Instruction," and Domain 4 was "Professional Responsibilities."

Based on documentation, ratings for each Indicator included: "unsatisfactory" with a rating of 1; "basic" with a rating of 2; "proficient" with a rating of 3; and "distinguished" with a rating of 4. Teachers received an overall rating on their evaluations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]





2. August 2017 Correspondence involving the Superintendent, RSU 21's Attorney, and Teacher A's Attorneys

Documentation reflected that from August 12, 2017 to August 16, 2017, Teacher A's attorneys and RSU 21's attorney communicated about Teacher A's potential legal claims, culminating with Teacher A's attorneys proposing, on August 16, 2017, a settlement which included a request for changes to Teacher A's 2016-2017 summative evaluation, anti-bias training for RSU 21's students and staff,<sup>39</sup> and payment of attorneys' fees. Documentation reflected that RSU 21's attorney sent this settlement proposal to the Superintendent on August 17, 2017.

Documentation reflected that on August 28, 2017, RSU 21's attorney sent the Superintendent an email which included a "draft response" to Teacher A's attorneys. [REDACTED]

[REDACTED] Documentation reflected that the Superintendent replied to RSU 21's attorney on August 28, 2017, approving the draft response. Documentation indicated that on August 28, 2017, RSU 21's attorney sent the response to Teacher A's attorneys by email with a different date of the executive session (i.e., September 18, 2017).

3. Discussion of Teacher A's Potential Claims at a Meeting prior to the September 18, 2017 Board Meeting

Based on documentation and interviews, there was discussion of Teacher A's potential claims at a meeting in which the Superintendent, Board Member B, Board Member C, and RSU 21's attorney met prior to the September 18, 2017 Board meeting.<sup>40</sup> Information from interviews indicated that during this meeting, Board Member B and Board Member C were informed of the general nature of Teacher A's potential legal claims and proposed settlement terms.

4. September 18, 2017 Letter from Teacher A's Attorneys

Documentation indicated that, in advance of the September 18, 2017 Board meeting, Teacher A's attorneys sent a letter (the "September 18 Letter") to "further explain" the settlement proposal they had submitted on August 16, 2017. Documentation reflected that the September 18 Letter was addressed to the "RSU 21 School Committee" in care of RSU 21's attorney.

5. Information Shared and Discussed During Executive Session, September 18, 2017

[REDACTED]

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<sup>39</sup> The August 16, 2017 settlement proposal did not specify the proposed recipient of the anti-bias training. However, based on context including future settlement proposal discussions, the Investigative Team reasonably determined that the anti-bias training was proposed for RSU 21's students and staff.

<sup>40</sup> The Superintendent, Board Member B, and Board Member C, had different recollections of when exactly this meeting occurred.

[REDACTED]

[REDACTED]

[REDACTED]

6. Continued Settlement Discussions between RSU 21's Attorney and Teacher A's Attorneys After September 18 Executive Session

Based on documentation and interviews, following the September 18, 2017 Board meeting, Teacher A's attorneys and RSU 21's attorney continued settlement discussions. Board Member B indicated that as chair, she was aware that RSU 21's attorney was "pretty much in constant contact" with Teacher A's attorneys and that there were continued settlement discussions. Board Member B said, "I don't think we met again as a board."

Documentation gathered reflected that after the September 18, 2017 Board meeting, until November 1, 2017, RSU 21's attorney and Teacher A's attorneys continued to engage in settlement discussions. Specifically, RSU 21's attorneys and Teacher A's attorneys communicated on or about: October 5, 2017<sup>41</sup> October 6, 2017, October 11, 2017, October 25, 2017, October 31, 2017, and November 1, 2017. The discussions in these communications involved Teacher A's request for changes to her 2016-2017 evaluation, the provision of anti-bias

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<sup>41</sup> The October 5 communication was a letter from Teacher A's attorneys to the "RSU 21 School Committee" in care of RSU 21's attorney (the "October 5 Letter") which updated Teacher A's proposed settlement to offer an alternative schedule for the requested anti-bias training, to clarify the requested changes to Teacher A's 2016-2017 evaluation, and to provide an updated accounting of Teacher A's attorneys' fees.

training, and payment of attorneys' fees. RSU 21's attorney countered the request by offering to make some changes to Teacher A's 2016-2017 evaluation, but not to the extent requested by Teacher A; to engage the anti-bias trainer proposed by Teacher A, although proposing less training than Teacher A had requested; and to contribute \$3,000 to Teacher A's attorneys' fees, instead of the \$10,500 Teacher A had requested.

7. Request by Board Member A to Review Documentation Regarding Teacher A's Complaint, and that Additional Information Be Shared with Board, November 6, 2017 to November 8, 2017

Documentation reflected that from November 6, 2017 until November 8, 2017, Board Member A exchanged emails with Board Member B, the Superintendent, the administrative assistant to the Superintendent, and RSU 21's attorney, about providing Board Member A access to documents related to the settlement negotiation process. In an email to Board Member A dated November 6, 2017, on which the Superintendent was cc'd, Board Member B indicated that she had spoken to the Superintendent, who had indicated that Board Member A could review the September 18 Letter, but could not take the original or make copies.

In an email to Board Member B dated November 7, 2017, and cc'd to the Superintendent, Board Member A thanked Board Member B for her email, and asked, "Do you not feel that the full Board should see the letter addressed to them? Have you read it?" In an email to Board Member A dated November 7, 2019, the Superintendent responded that the September 18 Letter included a proposed settlement that was discussed during the September 18 Executive Session, and that other proposals had "gone back and forth [. . .]" so that letter was "now quite outdated."

Board Member B wrote in a November 7, 2017 email to Board Member A and the Superintendent that she and the Superintendent had "looked through the file," confirmed that Board Member B had read the September 18 Letter, and noted that there were "no other communications that have been sent to the Board" and that the September 18 Letter was "the only piece that [wa]s appropriate for Board viewing, given that it was directed to the Board." Documentation reflected that Board Member A responded to this email, requesting to view the attachments to the September 18 Letter, and requesting that Board Member B "include an item on [the Board's] next meeting's agenda to consider a motion to go into Executive Session to consult about a legal issue." Documentation reflected that the Superintendent responded to this email, noting that "personnel records are protected" and that although the agenda and a possible executive session were Board Member B's decision, the Superintendent did not "feel an executive session [wa]s warranted or appropriate at this time." Documentation reflected that Board Member B responded to this email, indicating that she wanted to meet with Board Member A and RSU 21's attorney, and noted that [REDACTED]

[REDACTED]

[REDACTED]

Documentation reflected that Board Member A, Board Member B, and RSU 21's attorney met on November 15, 2017.



8. Request by RSU 21's Attorney that the Superintendent Forward Email to Board Regarding Unsuccessful Settlement Discussions and Filing of the Complaint

As noted in Section III.A, Teacher A filed the Complaint with the MHRC on January 8, 2018.

Documentation provided indicated that on January 12, 2018, RSU 21's attorney requested that the Superintendent forward the following email to the Board:

Dear Board Members,

I am writing to let you know that despite our best efforts, so far we have been unable to resolved the claim that we discussed in Executive Session back in September, and that the employee has filed a claim against the District with the Maine Human Rights Commission. The pendency of a claim before the Maine Human Rights Commission is confidential at this stage so please do not disclose this information to anyone outside of the Board.

The District's insurance carrier has been put on notice of this claim and we will work with the insurer to respond to the complaint the appropriate time. We also plan to continue our efforts to resolve the matter as well.

9. January 2018 Communications between Board Member A, the Superintendent, Board Member B, Board Member C, and RSU 21's Attorney

Documentation reflected that on January 13, 2018, Board Member A, in an email to the Superintendent, Board Member B, and RSU 21's attorney, noted that in the November 15, 2017 meeting between Board Member A, Board Member B, and RSU 21's attorney it "was agreed that if the complaint could not be resolved and went to the Maine Human Rights Commission or a Court of Law, that the information that was sent addressed to the RSU 21 School Board would be shared with them," and asked about the plan for providing those materials to the Board. Documentation reflected that the Superintendent responded to Board Member A on the same day, noting that providing the Board with the requested materials "would be very atypical in these kinds of situations" and would defer to RSU 21's attorney's advice. Documentation reflected that Board Member A replied on January 17, 2018, requesting an executive session to discuss the matter, and that the Superintendent then informed Board Member B and Board Member C that the Superintendent had asked RSU 21's attorney to prepare a written recommendation for how to proceed.

Documentation reflected that on January 18, 2018, RSU 21's attorney sent a letter to Board Member B and Board Member C regarding Board Member A's request to hold an executive session. [REDACTED]

[REDACTED]" Documentation reflected that on January 22, 2018, Board Member B informed Board Member A [REDACTED]

Documentation reflected that between January 22, 2018 and January 29, 2018, Board Member A, Board Member B, Board Member C, the Superintendent, and RSU 21's attorney exchanged a series of emails regarding Board Member A's requests to: 1) schedule an executive session; and 2) provide the Board with information and documents related to the Complaint and settlement negotiations with Teacher A's attorneys. Documentation reflected that throughout this exchange, the Superintendent and Board Member B enlisted RSU 21's attorney's advice to respond to Board Member A's requests, and that beginning on January 25, 2018, at Board Member B's direction, Board Member A's emails were responded to only by RSU 21's attorney.<sup>42</sup>

#### 10. RSU 21's Response to the Complaint

As noted in Section III.B, RSU 21 filed its Response to the Complaint on February 23, 2018.

#### 11. Summer 2018

Based on documentation and interviews, Board Member B stepped down as the Board Chair in or around June 2018, and Board Member D was elected Board Chair in or around July 2018.

#### 12. Offer to Mediate the Complaint

Documentation reflected that on September 13, 2018, the MHRC offered Teacher A's attorney and RSU 21's attorney the opportunity to use the MHRC's "Third Party Neutral Mediation Program" to attempt to resolve the Complaint. Documentation reflected that on September 19, 2018, Teacher A's attorney responded, indicating that Teacher A was interested in mediating the Complaint. Documentation reflected that RSU 21's attorney responded on September 19, 2018, indicating that RSU 21 was not interested in participating in mediation at that time.

Board Member D, in an interview, indicated that RSU 21's attorney informed her that there had been a request to mediate the Complaint by Teacher A's attorney, and that RSU 21's attorney had consulted with the Superintendent and that they wanted Board Member D's opinion on the matter. [REDACTED]

#### 13. Board Meeting, February 25, 2019

Based on documentation and interviews, during a February 25, 2019 Board meeting, the events described in the Complaint were discussed by the Superintendent, RSU 21's attorney, and members of the public.

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<sup>42</sup> With the exception that documentation reflected that on January 28, 2018, Board Member C began a new email exchange with Board Member A that did not include Board Member B, the Superintendent, or RSU 21's attorney, in which Board Member C cautioned Board Member A about "potential ethical code violations" related to Board Member A's "recent emails and demands," and clarified Board Member C's understanding of the Board's role with regard to settlement negotiations.

#### 14. Settlement Negotiations, March 2019 through June 2019

Based on documentation, Teacher A's attorneys sent a letter to RSU 21's attorney on March 4, 2019, indicating that Teacher A remained open to settlement negotiations. Documentation reflected that on March 4, 2019, RSU 21's attorney, at the request of Board Member D, shared email communications between RSU 21's attorney and Teacher A's attorney from August 16, 2017, September 15, 2017, September 18, 2017, and October 5, 2017, with Board Member A and Board Member D. Documentation further reflected that on March 4, 2019, RSU 21's attorney emailed Board Member D, asking for permission to speak with one of Teacher A's attorneys to communicate about potential settlement terms in response to Teacher A's attorneys' March 4 letter. Documentation reflected that Board Member D shared RSU 21's attorney's request with the Board in an email dated March 4, 2019, noting that "[a]ny/all results of her discussion will be shared with the [B]oard," and asking whether any Board members had "significant concerns" about this course of action.

Documentation reflected that on March 5, 2019, Board Member A indicated to Board Member D that she was uncomfortable with RSU 21's attorney "directing the process" because Board Member A believed that the attorney had "acted unprofessionally to date," and had lost Board Member A's "trust in [RSU 21's attorney] to fairly represent our District and our Board." Based on documentation and information from Board Member D's interview, Board Member D did not object to another attorney handling the matter, and Board Member D then asked RSU 21's attorney if there was another associate at the same law firm that could assist the Board moving forward. Based on documentation and information from Board Member D's interview, the Board engaged a different associate at the same law firm as RSU 21's attorney, who then communicated with Teacher A's attorneys regarding settlement negotiations.

Based on interviews, the Board then held two executive sessions during which the settlement was discussed and agreed upon. Information from interviews and documentation indicated that the executive session held during the June 3, 2019 Board meeting, that was followed by a motion referencing "settlement," related to discussions of settlement proposals regarding Teacher A. Information from documentation and interviews indicated that the Board voted to approve the settlement with Teacher A on June 17, 2019.

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Based on the totality of information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that:

1. As of July 18, 2017, the Superintendent was aware of "potential employment-related legal claims" by Teacher A against RSU 21, and that these potential claims included but were not limited to race discrimination and retaliation, and involved the Confederate Flag Incident, the CRT Letter, and the Threat.
2. The Superintendent communicated with RSU 21's attorney regarding Teacher A's potential claims on or before July 21, 2017.
3. Teacher A's attorneys submitted a settlement proposal to RSU 21's attorney on August 16, 2017.

4. The Superintendent and RSU 21's attorney informed Board Member B and Board Member C of the existence of Teacher A's potential legal claims in a meeting prior to the September 18 Executive Session.
5. During the September 18 Executive Session, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] RSU 21's attorney did not provide the September 18 Letter to the Board during the September 18 Executive Session.
6. RSU 21's attorney and Teacher A's attorneys exchanged settlement proposals during October 2017 and November 2017.
7. Board Member A, on November 6, 2017, began requesting access to documentation regarding Teacher A's potential claims, and was granted access to the September 18 Letter on or around November 7, 2017.
8. On January 12, 2018, the Board was notified that settlement discussions were unsuccessful, that the Complaint was filed, and that the pendency of the Complaint was confidential and the Board was asked not to disclose information to anyone outside the Board.
9. Beginning on January 13, 2018, and continuing throughout January 2018, Board Member A requested that the Board convene an executive session to discuss the Complaint and the settlement negotiations.
10. During January 2018, the Superintendent and Board Member B sought and relied on advice of RSU 21's attorney regarding what information should be shared with the Board and whether to convene an executive session to discuss Teacher A's claims, and no executive session was scheduled for the Board to discuss the Complaint or documents related to settlement proposals.
11. During September 2018, the MHRC offered mediation services to RSU 21 and Teacher A, and Board Member D was apprised of this offer by RSU 21's attorney. RSU 21, through its attorney, declined the offer to mediate the Complaint.
12. During a February 25, 2019 Board meeting, the events described in the Complaint were discussed by the Superintendent, RSU 21's attorney, and members of the public.
13. On or around March 5, 2019, the Board, through Board Member D, engaged a different associate at the same law firm as RSU 21's attorney, who then communicated with Teacher A's attorneys regarding settlement negotiations.
14. The Board, on June 3, 2019, discussed pursuing a settlement with Teacher A, and, on June 17, 2019, the Board voted to approve a settlement agreement with Teacher A.

## **V. Determination**

The Investigative Team made determinations based on the findings of facts set forth above regarding whether the administration and Board complied with RSU 21 policies relevant to this investigation.<sup>43,44</sup> The Investigative Team examined the following RSU 21 policies regarding race discrimination: Nondiscrimination/Equal Opportunity and Affirmative Action (AC) (the "Nondiscrimination Policy"); Harassment and Sexual Harassment of School Employees (ACAB)

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<sup>43</sup> The determinations regarding violations of RSU 21 policies are informed by regulatory guidance and legal precedent, as appropriate.

<sup>44</sup> The RSU 21 policies reviewed were those in effect at the times relevant to this investigation.

(the “Harassment of School Employees Policy”); and the Employee and Third Party Discrimination and Harassment Complaint Procedure (ACAB-R) (the “Procedures”). In addition, the Investigative Team examined the following RSU 21 policies regarding Board and superintendent responsibilities: the Board-Superintendent Relationship (BDD) policy (the “BDD Policy”); the School Attorney (BDG) policy (the “BDG Policy”); the Board Member Code of Ethics (BCA) policy (the “BCA Policy”); the Executive Sessions (BEC-E) policy (the “BEC-E Policy”); and the Agenda (BEDB) policy (the “BEDB Policy”).

### **A. Confederate Flag Incident**

The Investigative Team assessed the following regarding the Confederate Flag Incident: 1) whether [REDACTED] adequately investigated or responded to Teacher A’s allegations of discrimination and harassment; 2) whether the conduct Teacher A experienced constituted discrimination; and 3) whether the conduct Teacher A experienced constituted harassment.

#### **1. Information Sufficient to Find that the Administration Did Not Take Appropriate Steps to Investigate and Respond Once on Notice of Allegations Regarding the Confederate Flag Incident**

In considering the steps RSU 21 took to investigate and respond to Teacher A’s allegations, the Investigative Team examined whether RSU 21’s response was consistent with the Procedures, which required, in part, that: a) a complaint<sup>45</sup> be raised to the attention of the [REDACTED],<sup>46</sup> or “to an alternate school administrator/principal”; b) [REDACTED], or a designee, conduct an investigation; c) the subject of the complaint be given an opportunity to be heard in the investigation; d) [REDACTED] keep a “written record of the investigation process”; e) [REDACTED] consult with [REDACTED] concerning the investigation, conclusions, and any remedial and/or disciplinary actions; f) [REDACTED] determine whether “discrimination or harassment occurred” and, if so, in consultation with [REDACTED], determine what remedial action was needed, if any, to “end the discrimination or harassment, remedy its effect and prevent recurrence,” and “what disciplinary action should be taken”; and g) [REDACTED] inform the employee who made the complaint “in writing of the results of the investigation and its resolution.”

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<sup>45</sup> Under the Procedures, a complaint is defined as “an allegation that an employee or other third party has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, age, religion, ancestry, national origin, genetic information or disability.” Teacher A’s emails to [REDACTED] and [REDACTED] about the Confederate Flag Incident, emails in which Teacher A variously indicated that she found the flag offensive, questioned whether she was targeted or if the incident was planned to terrorize her, referenced her race, and indicated that she thought the incident warranted further investigation, constituted a complaint under the Procedures.

<sup>46</sup> [REDACTED] identified that [REDACTED] was [REDACTED], which the Investigative Team reasonably determined indicated that [REDACTED] was the [REDACTED] under the Procedures.

- a. Teacher A's Complaint Was Raised to [REDACTED] and to [REDACTED]

The Procedures reflected that complaints initiated by any employee reporting discrimination or harassment must be brought to [REDACTED], or "to an alternate school administrator/principal."

Although Teacher A did not report the Confederate Flag Incident to [REDACTED], she did report it to [REDACTED] and to [REDACTED]. The Investigative Team determined that it was reasonable for Teacher A to identify [REDACTED] and [REDACTED] as "an alternate school administrator/principal" who could receive her complaint, because of their authority at KHS. Based on this information, the Investigative Team determined that Teacher A reported the Confederate Flag Incident, including the video of the incident, in accordance with the Procedures.

- b. [REDACTED] Did Not Investigate Teacher A's Complaint, but [REDACTED] and [REDACTED] and [REDACTED] Did Conduct Inquiries

The Procedures required [REDACTED] to investigate a complaint, "unless [REDACTED] chooses to investigate the complaint or designates another person to investigate it." The Investigative Team determined that [REDACTED] did not investigate Teacher A's complaint, and no information gathered reflected that [REDACTED] designated anyone to conduct the investigation in lieu of [REDACTED].<sup>47</sup>

The Investigative Team noted, however, that, although the [REDACTED] or a designee did not conduct an investigation, inquiries were conducted by [REDACTED] and by [REDACTED] in response to direct requests from Teacher A. The Investigative Team therefore considered the inquiries of [REDACTED] (the "[REDACTED] Inquiry") and of [REDACTED] (the "[REDACTED] Inquiry") (collectively, the "Inquiries") to consider whether they were done in accordance with the Procedures.

The Investigative Team noted that although Teacher A informed administrators about the video, and Jane Doe provided information to administrators about the video, neither of the Inquiries examined the scope of the video distribution or its impact on their determinations regarding

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<sup>47</sup> [REDACTED] stated that RSU 21's practice was to have the "[REDACTED] involved" in an investigation, but [REDACTED] said that [REDACTED] was not "told about [the investigation of the Confederate Flag Incident] until it was done and then what [REDACTED] told was, 'It is all handled.'" The Investigative Team noted, however, that [REDACTED] and [REDACTED] each expressed that Teacher A had appeared "angry" or "upset" at the strategic planning meeting when she approached [REDACTED] to discuss the Confederate Flag Incident. The Investigative Team determined, based on this information, that [REDACTED] was aware close in time to learning about the Confederate Flag Incident that Teacher A was upset about the incident, and [REDACTED] therefore was on notice that Teacher A likely did not feel that the matter had been "handled." The Investigative Team determined, therefore, that the information did not support [REDACTED] explanation for not following the Procedures.

whether Teacher A experienced harassment under the Procedures. [REDACTED] specifically identified that [REDACTED] did not know how widely the video had been viewed and said that [REDACTED] did not think that [REDACTED] and [REDACTED] looked into that matter.

Based on interviews, the video appeared to be broadly distributed and had an impact on RSU 21's students. Teacher A said that Jane Doe identified two other students who had seen the video; Educational Technician B said that her child who was a student had seen the video; and Teacher B said that her class, in discussing "To Kill A Mockingbird," brought up the Confederate Flag Incident, and were upset about the incident. Given the apparent broad distribution of the video, the Investigative Team was concerned that the failure of the Inquiries to examine the video distribution resulted in a failure by RSU 21 to understand fully the impact of the Confederate Flag Incident, including whether this incident fit within the Procedures' definition of harassment.

The information gathered did reflect, in fact, that Jane Doe herself may have experienced harassment, through the creation of a hostile environment based on race, because of the video of the Confederate Flag Incident. Jane Doe described to the Investigative Team that after seeing the video, when she saw Student B in class, she began to experience a "panic attack" and she left class to go to the nurse. Jane Doe described that she began to hyperventilate when speaking to [REDACTED] and [REDACTED] about the Confederate Flag Incident. Jane Doe's description indicated that, based on the experience of seeing the video of the Confederate Flag Incident (and likely compounded by her past experiences with Confederate flags and that student group in RSU 21), Jane Doe had experienced conduct based on race that likely was sufficiently severe and pervasive (across schools and years) to interfere with or limit her ability to participate in RSU 21's programs and activities (e.g., her class). Although the Confederate Flag Incident was directed at Teacher A, not toward Jane Doe, racial acts need not be targeted at an individual to create a racially hostile environment for that individual. The Investigative Team was concerned that the failure of the Inquiries to further assess Jane Doe's experiences and the distribution of the video resulted in a missed opportunity to address the impact of these experiences on students, including on Jane Doe.

The Investigative Team determined that RSU 21 did not comply with the Procedures when it failed to investigate the video of the Confederate Flag Incident or its distribution.

c. Student Involved in the Incident Was Not Given an Opportunity to Be Heard through the Inquiries

The Investigative Team considered whether RSU 21 complied with the step of the Procedures that indicated, "The person who is the subject of the complaint will be provided with an opportunity to be heard as part of the investigation. The complainant shall not be required to attend meetings with the person who is the subject of the complaint, but may choose to do so as part of the resolution process."

In the [REDACTED] Inquiry, [REDACTED] did not speak to Student B, Student C, Student D, or Student E regarding the Confederate Flag Incident.

Student B, Student C, and Student D were spoken to as part of the [REDACTED] Inquiry regarding the Confederate Flag Incident. In addition, the information gathered reflected that Teacher A was not required to be present for meetings with the accused students. Student E was not interviewed, however, in this inquiry, even after Teacher A and Jane Doe informed [REDACTED] that Student E was in the Screenshot with his middle finger raised.

The Investigative Team found that RSU 21 followed its Procedures by interviewing Student B, Student C, and Student D, and by not requiring Teacher A to be present for meetings with those individuals. However, based on its failure through the Inquiries to interview Student E, RSU 21 did not comply with the Procedures.

- d. Neither the [REDACTED] [REDACTED]  
[REDACTED] Kept a “Written Record of the Investigation Process”

The Procedures required that [REDACTED] “keep a written record of the investigation process.” No information provided during this investigation indicated that any written record was maintained of the investigative process. The Investigative Team determined that RSU 21 did not comply with the Procedures when it failed to keep a written record of the investigation process.

- e. Neither the [REDACTED] [REDACTED]  
[REDACTED] Consulted with [REDACTED] Concerning the Investigation, Conclusions, or any Remedial and/or Disciplinary Actions

The Procedures required the [REDACTED] to consult with [REDACTED] concerning the investigation, conclusions, and any remedial and/or disciplinary actions. Information from [REDACTED] indicated that [REDACTED] was not consulted regarding the investigation or conclusions, other than being told, “It is all handled.” The Investigative Team determined that RSU 21 did not comply with the Procedures when no one consulted with [REDACTED] concerning the investigation, conclusions, and any remedial and/or disciplinary action.

- f. Neither the [REDACTED] [REDACTED]  
[REDACTED] Determined Whether Discrimination or Harassment Occurred

The Procedures required the [REDACTED] to determine whether “discrimination or harassment occurred.” The Procedures required that if the determination was made that discrimination or harassment did occur, the [REDACTED] must, in consultation with [REDACTED], determine what remedial action was needed, if any, to “end the discrimination or harassment, remedy its effect and prevent recurrence,” and “what disciplinary action should be taken.”

The information gathered reflected that disciplinary action was taken in response to the findings of the [REDACTED] Inquiry. Specifically, Student B, Student C, and Student D each were suspended for their roles in the Confederate Flag Incident. This reflected that an assessment had been made regarding whether the students complied with conduct expectations for the school.



However, neither of the Inquiries made any determination regarding whether discrimination or harassment had occurred. For example, no information indicated that either of the Inquiries considered whether a hostile environment had been created for Teacher A based on her race.

As the Inquiries did not assess whether Teacher A (or anyone else) had experienced discrimination or harassment due to the Confederate Flag Incident, RSU 21 could not take the step of determining whether any actions were required to remedy the effects of such discrimination or harassment (such as offering counseling to Teacher A) or to prevent its recurrence. Although a restorative justice circle was conducted with Student B and Student D, the other students involved in the Confederate Flag Incident (i.e., Student C and Student E) did not participate in any such event that may have been designed to prevent a recurrence of the incident.

The Investigative Team was particularly concerned that, although Jane Doe provided information in the [REDACTED] Inquiry regarding a previous incident she experienced at RSU 21 similar to and involving some of the same students as in the Confederate Flag Incident, no RSU 21 administrators appeared to consider whether additional steps might be required to prevent future instances of the Confederate flag being used to intimidate or harass black members of the RSU 21 community.

- g. Neither the [REDACTED] [REDACTED]  
[REDACTED] Informed Teacher A in Writing of the Results of the Investigation and its Resolution

The Procedures required that the employee who made the complaint be informed “in writing of the results of the investigation and its resolution.” The information gathered reflected that no written notification was provided to Teacher A regarding the outcome of her complaint about the Confederate Flag Incident. The Investigative Team determined that RSU 21 did not comply with the Procedures when it failed to provide Teacher A with written notice of the outcome of her complaint.

## 2. Information Insufficient to Find that the Confederate Flag Incident Constituted Discrimination, Based on Relevant Policy

The Nondiscrimination Policy prohibited discrimination. The Investigative Team assessed whether the Confederate Flag Incident constituted discrimination of Teacher A, as defined in the Procedures. The Procedures indicated that discrimination “may include treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected class.”

The Investigative Team determined that the Confederate Flag Incident did not constitute possible discrimination as defined in the Procedures. The incident did not involve RSU 21 treating Teacher A differently, or preventing her from enjoying advantages or privileges given to others because of her race. Rather, the incident involved the conduct of a group of students toward Teacher A.

3. Information Sufficient to Find that Teacher A Experienced Harassment as a Result of the Confederate Flag Incident, Based on Relevant Policy

The Nondiscrimination Policy prohibited harassment of employees and others on the basis of race, and the Harassment of School Employees Policy prohibited harassment of school employees based on race. The Harassment of School Employees Policy indicated that harassment includes, but is not limited to, verbal abuse, threats, physical assault and/or battery based on race. In addition, the Procedures indicated that harassment “may include oral, written, graphic, electronic or physical conduct relating to an individual’s actual or perceived membership in a protected class that is sufficiently severe, pervasive or persistent so as to interfere with or limit that individual’s ability to participate in the school unit’s programs or activities by creating a hostile, intimidating or offensive environment.”

To determine whether Teacher A was subjected to harassment, as defined by relevant policy, as a result of the Confederate Flag Incident, the Investigative Team assessed whether, based on the preponderance of the evidence: a) Teacher A experienced oral, written, graphic, electronic or physical conduct relating to her race; and b) the conduct was sufficiently severe, pervasive, or persistent so as to interfere with or limit Teacher A’s ability to participate in RSU 21’s programs or activities by creating a hostile, intimidating, or offensive environment.

a. Teacher A Experienced Oral, Written, Graphic, Electronic, or Physical Conduct Relating to Her Race

The Investigative Team assessed whether, in the Confederate Flag Incident, Teacher A experienced oral, written, graphic, electronic, or physical conduct based on her race. Teacher A experienced Student B walking into her classroom, with Student C and Student D, with a large Confederate flag draped across Student B’s back and the word “Redneck” written down the center of the flag. Teacher A experienced that Student D videotaped the incident and posted it online to be shared among the community. The students’ recording of the interaction, as well as posting it with the caption, “Bringing it to [Teacher A],” reflected that the students had targeted Teacher A with their display of the “Redneck” Confederate flag, and that they anticipated and sought a reaction from Teacher A, who is black.

The Investigative Team noted that the Confederate flag has been identified in American society as an evocation of the history of slavery and a symbol of racism, and Teacher A and [REDACTED] in particular each described that they understood the Confederate flag to be a symbol of racism.

Based on the totality of information provided during this investigation, the Investigative Team determined that the Confederate Flag Incident constituted graphic conduct that related to Teacher A’s race.

- b. The Conduct Was Sufficiently Severe, Pervasive, or Persistent as to Interfere with or Limit Teacher A's Ability to Participate in RSU 21's Programs or Activities by Creating a Hostile, Intimidating, or Offensive Environment

The Investigative Team considered whether the Confederate Flag Incident was sufficiently severe, pervasive, or persistent as to interfere with or limit Teacher A's ability to participate in RSU 21's programs or activities by creating a hostile, intimidating, or offensive environment. The Investigative Team examined this from both a subjective and objective perspective.

The Investigative Team first considered whether Teacher A subjectively experienced sufficient impact from the Confederate Flag Incident to interfere with or limit her ability to participate in RSU 21's programs or activities. On March 23, 2016, Teacher A did not attend the strategic planning meeting, she left school, and she did not teach that day, all for reasons related to the Confederate Flag Incident. Based on all the information gathered, the Investigative Team found that the Confederate Flag Incident had the effect of interfering with Teacher A's ability to participate in RSU 21's programs and activities when she did not participate in the strategic planning meeting and when she did not teach that day.

Teacher A also described that when she first saw the flag during the Confederate Flag Incident, she felt "paralyzed" and "attacked." Teacher A said that seeing the flag led her to feel the students were communicating that they were "better than" Teacher A and "remind[ing her] of [her] place." Teacher A said that she "had to go on teaching" and maintain her composure. Teacher A described that it "hurt even more" when she realized that a video of the incident had been distributed among students. Teacher A said that the video distribution made her feel like the Confederate Flag Incident was "targeted" and "orchestrated," and she realized "there were other victims in the wake [ . . . ]." Teacher A said that after the Confederate Flag Incident, her relationship with the students involved was never the same, and seeing them in the hallway made her nervous.

Other information gathered supported Teacher A's description that she had been emotionally impacted by the Confederate Flag Incident. [REDACTED] and [REDACTED] each described that Teacher A appeared "angry" or "upset" when she spoke to [REDACTED] about the Confederate Flag Incident the following week, at the start of the strategic planning meeting.

Objectively, the Investigative Team found that, given the Confederate flag's symbolism and history, having a student enter a classroom of a black teacher draped in that flag, while another student videotaped the interaction and then disseminated it online with a caption targeting the teacher, clearly could create a hostile environment based on race.

Upon weighing both a subjective and objective assessment of the totality of the evidence, the Investigative Team determined that the Confederate Flag Incident was sufficiently severe, pervasive, or persistent so as to interfere with or limit Teacher A's ability to participate in RSU 21's programs or activities by creating a hostile, intimidating or offensive environment, and constituted harassment within the definition outlined in relevant policy.

#### 4. Conclusion Regarding Confederate Flag Incident

Based on the totality of the information provided during this investigation, the Investigative Team found that, through the Inquiries, RSU 21 did investigate the Confederate Flag Incident. The Investigative Team determined, however, that [REDACTED] failed to comply with relevant policy, specifically by: overlooking a critical aspect of Teacher A's complaint (e.g., the video); failing to interview Student E; failing to keep a written record of the investigation; failing to consult with [REDACTED] concerning the investigation, its conclusions, and any remedial and/or disciplinary actions; failing to provide Teacher A with written notice of the outcome of her complaint; failing to determine whether Teacher A experienced harassment or discrimination; and failing to identify whether a hostile environment (harassment under the Procedures) was created for other members of RSU 21's community, including students. As a result, RSU 21 did not have the information necessary to determine what remedial actions, if any were necessary (e.g., actions to prevent recurrence or remedy effects). The Investigative Team, therefore, determined that [REDACTED] did not take appropriate steps to investigate and respond to the Confederate Flag Incident.

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that the Confederate Flag Incident constituted discrimination, as that term is defined in relevant policy. The Investigative Team, however, found that the preponderance of the evidence was sufficient to find that the Confederate Flag Incident constituted harassment toward Teacher A, as that term is defined in relevant policy.

#### **B. Retaliation**

Teacher A, in the Complaint, alleged that the 2016-2017 evaluation process was retaliatory. She noted that the last paragraph of her 2016-2017 evaluation included references to [REDACTED]  
[REDACTED]” She wrote, “The message to me was equally clear: that my opposition to race discrimination was unwelcome at RSU 21, and I should stop it if I wanted to be appointed to a continuing contract the next year.”

Relevant to retaliation, the Procedures noted, “Employees will not be retaliated against for reporting suspected discrimination or harassment, or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary measures, up to and including dismissal” (the “Retaliation Policy”). In the absence of a more detailed definition under the Retaliation Policy, the Investigative Team looked to regulatory guidance and legal precedent regarding retaliation and determined that to establish that retaliation occurred as alleged by Teacher A, it needed to find by a preponderance of the evidence that: a) Teacher A engaged in a protected activity or protected activities;<sup>48</sup> b) [REDACTED] at RSU 21 who allegedly retaliated against Teacher A were aware of the protected

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<sup>48</sup> Specifically, the Investigative Team considered whether Teacher A engaged in protected activities by participating in an investigation regarding race discrimination or by opposing discrimination in a reasonable manner.

activity or activities; c) RSU 21 engaged in conduct that was adverse<sup>49</sup> to Teacher A either contemporaneous with or subsequent to the protected activity; and d) there was a causal connection between the protected activity and the adverse action. If any one of these elements could not be established based on the preponderance of the evidence, the Investigative Team determined that the information was insufficient to find retaliation. If all of these elements were established, the Investigative Team next examined whether: e) the conduct was supported by a legitimate, non-retaliatory reason; and, if it was, whether f) the legitimate reason was actually a pretext for retaliation. Finally, where the analysis resulted in an inference that the action under consideration was in fact retaliatory, the Investigative Team considered whether g) the materially adverse action would not have been taken “but for” the protected activities.

Based on the allegations in Teacher A’s Complaint and Reply, the Investigative Team analyzed whether [REDACTED] retaliated against Teacher A: 1) through her 2016-2017 summative evaluation; or 2) through interference with the CRT Letter.

1. Information Sufficient to Find that [REDACTED] Retaliated against Teacher A through Her 2016-2017 Evaluation, in Violation of the Retaliation Policy

a. Teacher A Engaged in Protected Activities

i. Teacher A Engaged in Protected Activities in Response to the Confederate Flag Incident

Teacher A responded in multiple ways to the Confederate Flag Incident, an incident that reasonably could be viewed as racially motivated. The Investigative Team examined whether Teacher A’s responses to the Confederate Flag Incident were protected activities:

- Teacher A responded to an email sent to her from Jane Doe in which Jane Doe informed Teacher A that Jane Doe had seen the video and asked if Teacher A was okay. In response, Teacher A, in one email wrote that she was okay, and in another asked for a copy of the video. The Investigative Team did not find that responding to a student’s query regarding whether she was okay and asking for information (i.e., the video) constituted a protected activity.
- Teacher A tried to speak with [REDACTED] about the Confederate Flag Incident prior to the strategic planning meeting, and the Investigative Team found that this constituted a form of opposition. During this interaction, which took place in public, Teacher A was emotional (according to Teacher A), upset (according to [REDACTED]), or angry (according to [REDACTED]), but the interaction lasted a short time of approximately 30 seconds to one minute, did not involve threats or unlawful conduct, and did not interfere with [REDACTED] ability to run the strategic planning meeting. As a result, the Investigative Team found that Teacher A’s interaction with [REDACTED] prior to the strategic planning meeting was not disruptive or unreasonable, and constituted a protected activity.

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<sup>49</sup> With regard to determinations about whether alleged conduct was an adverse action, the Investigative Team considered whether the alleged conduct reasonably could deter future protected activity. Merely unpleasant or transient actions are not considered adverse.

- Teacher A also reported the Confederate Flag Incident to [REDACTED].<sup>50</sup> The Investigative Team found that this was a form of opposition conducted in a reasonable manner, and, therefore, was a protected activity.

Based on the totality of information provided during this investigation, the Investigative Team determined that Teacher A engaged in protected activities by trying to speak to [REDACTED] prior to the strategic planning meeting about the Confederate Flag Incident and by reporting the Confederate Flag Incident.

ii. Teacher A's Involvement in the CRT Letter Did Not Constitute a Protected Activity

Teacher A alleged in the Complaint that RSU 21 retaliated against her due to her opposition to race discrimination. The CRT Letter was a form of opposition to race discrimination, and, therefore, the Investigative Team analyzed whether it constituted a protected activity within the retaliation standard.

Teacher A coordinated efforts by students to write a letter of support to the Casco Bay High School Civil Rights Team after a white man had yelled racial slurs at students from that school. The CRT Letter indicated in part that the KHS Civil Rights Team "condemn[ed]" the "racially motivated incident that happened near" Casco Bay High School. Although the CRT Letter was opposing racially-motivated conduct, it did not involve the participation of Teacher A in an investigation or proceeding, and did not involve opposition by Teacher A to a school's conduct that was prohibited under relevant policy or law. The CRT Letter, for example, was not regarding harassment by Casco Bay High School employees or students, and was not regarding Casco Bay High School's, KHS's, or RSU 21's response to harassment. As a result, the Investigative Team determined that although the CRT Letter was opposing racially-motivated conduct, it was not a protected activity under the Retaliation Policy.

b. [REDACTED] Was Aware that Teacher A Engaged in Protected Activities

Based on language in the May 9 Superintendent Email and various drafts of Teacher A's 2016-2017 evaluation which reference that Teacher A tried to talk to [REDACTED] before the strategic planning meeting and that she reported the Confederate Flag Incident, the Investigative Team found that [REDACTED] and [REDACTED] were aware of the protected activities in which Teacher A had engaged.<sup>51</sup>

<sup>50</sup> Teacher A also reported the Confederate Flag Incident to [REDACTED] and [REDACTED].

<sup>51</sup> The Investigative Team noted that [REDACTED] and [REDACTED] may have had incorrect information regarding to whom Teacher A reported the Confederate Flag Incident. Although Teacher A reported the Confederate Flag Incident to [REDACTED], the May 9 [REDACTED] Email reflected that [REDACTED] thought that Teacher A reported the Confederate Flag Incident to the state, and Draft D and Draft E Evaluations also reference that Teacher A reported the incident to the state. In addition, [REDACTED], in an interview, stated that Teacher A had reported the Confederate Flag Incident to the Department of Justice. Although [REDACTED] and [REDACTED] may have had incorrect information regarding where Teacher A reported the incident, the preponderance of the evidence was sufficient to find that [REDACTED] and [REDACTED], at the time that they were drafting the

c. Teacher A Was Subjected to an Adverse Action Through the Evaluation

i. The Ratings on the Evaluation Were Not an Adverse Action

Teacher A, on the Signed Evaluation, based on her numerical rating, was [REDACTED]. [REDACTED].

The Investigative Team determined that, because numerical ratings on the 2016-2017 evaluation identified Teacher A as [REDACTED], the assignment of those ratings did not constitute an adverse action.

ii. Examples Provided in Domain 4 to Demonstrate a Pattern Regarding Teacher A [REDACTED] Constituted an Adverse Action

Teacher A, in her Complaint, indicated that she viewed the last paragraph of her evaluation as an adverse action. She noted that one version of this last paragraph indicated that she was [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Investigative Team considered a number of factors in determining whether the narrative in the Pattern Paragraph was materially adverse (i.e., the conduct reasonably could deter future protected activity):

- Teacher A was a non-tenured teacher on a year-to-year contract. As such, she reasonably could have believed that her future employment would be impacted by negative written comments on her evaluation. Under the circumstances, such comments could deter a reasonable person from engaging in the protected activities.
- The Pattern Paragraph in the drafts specifically referenced, in a manner that the Investigative Team reasonably determined was negative, the protected activities in which Teacher A engaged (e.g., by referencing the protected activities as examples of Teacher A [REDACTED]). These direct references to Teacher A's protected activities notified Teacher A that [REDACTED], did not support her engagement in protected activities, so much so that they included this on her evaluation.

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evaluation, generally were aware that Teacher A had reported the Confederate Flag Incident, even if they were unclear regarding where Teacher A reported it.

52 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

- Although the direct reference to the protected activities eventually was removed from the evaluation and, therefore, likely would not be viewed by future employers, the general statement in the Signed Evaluation about “several situations” in which Teacher A was [REDACTED] still was referring in a negative manner, even if indirectly, to Teacher A’s protected activities.

The Investigative Team considered that despite the Pattern Paragraph, Teacher A still received an overall rating of [REDACTED] on all drafts of the evaluation and on the Signed Evaluation. However, the direct, negative reference to protected activities in the Pattern Paragraph as examples of an ongoing concern about Teacher A [REDACTED], along with Teacher A’s status as a non-tenured teacher, were sufficient to support a finding that the inclusion in the Pattern Paragraph of the protected activities could reasonably deter future protected activities.

As such, the Investigative Team determined, based on the totality of information provided during this investigation, that the Pattern Paragraph in Domain 4 constituted an adverse action.

d. A Causal Connection Existed Between the Protected Activity and the Adverse Action

Teacher A’s protected activities occurred in March 2016, approximately 14 months prior to the May 9, 2017 email exchange between [REDACTED] and [REDACTED] and the drafting of Teacher A’s 2016-2017 evaluation. The Investigative Team could not infer a causal connection based on a temporal closeness between the protected activities and the adverse action, given the length of time between them. However, the Investigative Team noted that the Pattern Paragraph, in multiple drafts of the 2016-2017 evaluation, either directly or indirectly referenced the protected activities as examples of a larger concern (emphases added):

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e. RSU 21 Offered a Legitimate, Non-retaliatory Reason for the Pattern Paragraph in the 2016-2017 Evaluation

[REDACTED]

[REDACTED]

f. The Reason Provided for the Pattern Paragraph Was a Pretext for Retaliation

[REDACTED]

[REDACTED]

i. Teacher A Was Treated Differently From Other Teachers in the Evaluation Process

[REDACTED]

ii. The Reason Provided for the Pattern Paragraph Was Undermined by Inconsistencies and Lack of Corroboration

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g. Retaliation Was the “But For” Reason for the Pattern Paragraph

The Investigative Team’s final consideration was to assess whether the Pattern Paragraph would not have been included in Teacher A’s 2016-2017 evaluation were it not for retaliation for Teacher A’s protected activities.

[REDACTED]

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that retaliation for Teacher A's protected activities was the "but for" cause of the inclusion of the Pattern Paragraph in drafts and in the signed copy of Teacher A's 2016-2017 evaluation, and that [REDACTED] retaliated against Teacher A through her 2016-2017 evaluation, in violation of the Retaliation Policy.

2. Information Insufficient to Find that the [REDACTED] Retaliated against Teacher A through Involvement with the CRT Letter

Teacher A, in the Reply, wrote that RSU 21 "actively interfered with Teacher A's work as the leader of the KHS Civil Rights Team, because of her race and to retaliate against her for opposing illegal racist harassment."<sup>53</sup>

a. Teacher A Engaged in Protected Activities

The Reply indicated that the RSU 21 interfered with Teacher A's work on the KHS Civil Rights Team for opposing illegal racial harassment. Although the CRT Letter was not itself a protected activity, some of the conduct in which Teacher A engaged in response to the Confederate Flag Incident was.

b. [REDACTED] Was Aware that Teacher A Engaged in Protected Activities

[REDACTED] was present when Teacher A approached her to discuss the Confederate Flag Incident, and [REDACTED] heard about the Confederate Flag Incident and Teacher A's concerns from [REDACTED].

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<sup>53</sup> The Investigative Team considered Teacher A's allegation that the interference by RSU 21 was related to Teacher A's race, but as the proposal to send the CRT Letter was made by Teacher A and Teacher E, a white teacher, the Investigative Team determined that the preponderance of the evidence was insufficient to find that RSU 21's involvement with the Civil Rights Team was based on Teacher A's race.

- c. [REDACTED] Involvement with Regard to the CRT Letter Could Not be Determined an Adverse Action or Causally Connected to the Protected Activity

The Investigative Team was provided with information regarding one incident in which the administration was involved with the KHS Civil Rights Team, namely, [REDACTED] decision that the CRT Letter could be sent, but not on school letterhead. The Investigative Team determined, based on the totality of information provided during this investigation, that the preponderance of the evidence was insufficient to find that [REDACTED] involvement with regard to the CRT Letter was so adverse that it would deter future protected activities.

Even if [REDACTED] involvement with regard to the CRT Letter was an adverse action, no information provided indicated a temporal or contextual connection between the protected activities and the adverse action. The Confederate Flag Incident occurred approximately one year prior to the involvement of [REDACTED] regarding the CRT Letter, and the Investigative Team did not identify other information indicating that the two were otherwise connected. Although Teacher A indicated that the KHS Civil Rights Team was created due to the Confederate Flag Incident, this connection did not indicate that [REDACTED] involvement with the sending of the CRT Letter was due to Teacher A's response to the Confederate Flag Incident.

### 3. Conclusion Regarding Retaliation

Based on the totality of information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was sufficient to find that [REDACTED] retaliated against Teacher A through her 2016-2017 evaluation, in violation of Retaliation Policy. The Investigative Team determined that Teacher A engaged in protected activities, of which RSU 21 was aware, in responding to the Confederate Flag Incident, and that the Pattern Paragraph of Teacher A's 2016-2017 evaluation constituted an adverse action that was causally connected to Teacher A's protected activities. Although RSU 21 offered a legitimate, non-retaliatory reason for the comments included in the Pattern Paragraph, the Investigative Team found that the reason provided was a pretext for retaliation, and that, but for retaliation, the adverse action would not have occurred.

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that [REDACTED] [REDACTED] retaliated against Teacher A through its involvement with the CRT Letter.

### **C. Communication and Response Related to Settlement Proposals and Complaint**

The Investigative Team examined: 1) whether [REDACTED] [REDACTED] acted reasonably in communicating information to the Board regarding the Complaint and settlement proposals, including whether [REDACTED] complied with its policies;<sup>54</sup> and 2) whether the

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<sup>54</sup> The RSU 21 policies discussed in this section are those that were in effect at times relevant to Teacher A's settlement proposals and Complaint being raised to the attention of the Board (i.e., between September 18, 2017 and June 17, 2019).

Board acted reasonably related to RSU 21's response to the Complaint, including whether RSU 21's Board complied with its policies.

1. Information Insufficient to Find that ██████████ Acted Unreasonably or Failed to Comply with RSU 21's Policies, with Respect to Communicating Information with the Board about the Complaint and Settlement Proposals

The BDD Policy indicated that ██████████ is responsible for "keeping the Board informed about school operations, problems and opportunities." The Investigative Team therefore considered whether ██████████ kept the Board informed about the Complaint and settlement proposals.

In examining ██████████ communications with the Board about the Complaint and settlement proposals, the Investigative Team considered that the BDD Policy indicated that the Board was required to "[g]ive ██████████ full administrative authority and support for properly discharging his/her professional duties, while holding him/her responsible for acceptable results." The Investigative Team also considered that the BDD Policy required the Board to "[r]efer complaints, criticisms, and requests to ██████████ or other appropriate personnel and discuss them at Board meetings only after administrative solutions have been exhausted." The language from the BDD Policy about ██████████ and the Board's roles indicated that ██████████ was required to notify the Board of problems but that ██████████ was responsible for addressing any problems, and that the Board was responsible for "holding ██████████ responsible for acceptable results."

As of July 18, 2017, ██████████ was aware of "potential employment-related legal claims" by Teacher A, and on August 16, 2017, a specific settlement proposal was communicated to RSU 21's attorney. In the September 18 Executive Session, approximately one month after ██████████ became aware of the settlement proposal, ██████████ provided information to the Board about Teacher A's allegations, including that Teacher A's attorney had proposed a settlement.

Teacher A filed the Complaint on January 8, 2018, and on or about January 12, 2018, ██████████ notified the Board that settlement discussions were unsuccessful and that the Complaint had been filed. The Investigative Team determined based on this information that ██████████ provided notification to the Board of both the initial settlement proposal and the Complaint filing, close in time to when the events occurred.

The Investigative Team additionally examined information provided to the Board regarding the settlement proposals. The Investigative Team noted that RSU 21's new attorney did present information about a possible settlement agreement in executive session in the Board's June 3, 2019 meeting, and the Board agreed to a settlement proposal in the June 17, 2019 meeting. The Investigative Team found, however, that the Board was not notified of the details of all settlement proposal exchanges between September 2017 and June 2019. Despite the interest of Board Member A in learning more about Teacher A's allegations and the settlement proposals, the Investigative Team determined that, after the Board was notified of Teacher A's allegations and settlement proposal in the September 18 Executive Session, nothing in the BDD Policy

indicated that the Board should have been proactively notified of the details of ongoing settlement negotiations.

The Investigative Team also noted that the BDG Policy indicated that the Board “recognizes that the increasing complexity of school unit operations frequently requires procurement of professional legal services,” and “[a] decision to seek legal advice or assistance [o]n behalf of the school unit shall normally be made by the superintendent” or the Board Chair, although they may also be authorized by a Board vote.<sup>55</sup> The BDG Policy further noted that an attorney used by RSU 21 may “conduct” or “assist” with RSU 21 litigation, and it indicated that many types of legal services could be “considered routine” and would not require or necessitate “specific [B]oard approval.” In light of these provisions, the Investigative Team determined that [REDACTED] reasonably sought legal advice on behalf of the school unit, to assist with the settlement proposals.

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that [REDACTED] acted unreasonably or failed to comply with RSU 21’s policies with respect to communicating with the Board regarding the settlement proposals and the Complaint.

2. Information Insufficient to Find that Board Acted Unreasonably or Failed to Comply with RSU 21’s Policies, Related to RSU 21’s Response to the Complaint

The Investigative Team considered whether the Board acted reasonably, and whether the Board complied with RSU 21’s policies, related to RSU 21’s response to the Complaint. As noted in Section V.C.1, RSU 21’s BDD Policy indicated in part that the Board “holds the Superintendent responsible for [. . .] keeping the Board informed about school operations, problems and opportunities.” Each Board member, in accordance with the BCA Policy, promises to “confine [their] Board action to policy making, planning, and appraisal, leaving the administration of the schools to the Superintendent.” These policies reflected that, in general, the Board should defer to the Superintendent in matters of operation, although the Board remains responsible for oversight of the outcomes achieved by the Superintendent. The Investigative Team considered these policies in assessing whether the Board acted reasonably with respect to RSU 21’s response to the Complaint.

In general, the Board’s actions related to RSU 21’s response to the Complaint included receiving notification of the Complaint (after having discussed Teacher A’s claims in executive session), and discussing and finalizing a settlement agreement with Teacher A after RSU 21’s attorney had negotiated a settlement proposal. The Investigative Team determined that these actions were appropriate in light of the relevant Board policies. The Board policies required the Board to receive notice of “problems,” but no information indicated that the Board would be responsible for addressing such “problems” unless, according to the BDD Policy, “administrative solutions have been exhausted.” The information reflected that, with the Board’s knowledge, RSU 21’s attorney (in coordination with the Superintendent) responded to Teacher A’s settlement

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<sup>55</sup> The BDG Policy was amended in an October 16, 2017 Board meeting. The language quoted in this report was consistent in the BDG Policy as written both before and after that amendment.



proposals and the Complaint. The BDG Policy reflected that it was appropriate for the Board to defer to RSU 21's attorney for this work.

Additionally, the Investigative Team noted that when the Board discussed Teacher A's settlement proposals, the Board did so in executive session.<sup>56</sup> The Investigative Team considered whether the Board's use of executive session complied with BEC-E Policy. The BEC-E Policy indicated in part that executive session may be used to discuss "settlement offers" if "premature public knowledge" would create a "substantial disadvantage" for the Board.<sup>57</sup> The BEC-E Policy indicated that Board minutes must record that executive session was held, and that "no official action" may be taken in executive session. The Investigative Team determined that the discussions of Teacher A's settlement proposals fell within a category identified for executive session (i.e., discussing a settlement offer), and the premature public disclosure of those discussions could reasonably have been considered to pose a risk of disadvantaging the Board in the negotiation process. In addition, Board minutes for meetings in which executive sessions were held to discuss Teacher A's settlement proposals reflected that executive sessions were held, and no information indicated that official action was taken in executive sessions.<sup>58</sup>

The Investigative Team, finally, considered whether the Board should have discussed Teacher A's settlement proposals, in response to requests from Board Member A from approximately November 2017 through January 2018. The Investigative Team noted that the BEDB Policy allowed "[a]ny person" to request that an item be placed on the agenda, but it indicated that a request may not be approved. The BEDB Policy required the Superintendent to "prepare the actual written agenda" in coordination with the Board's Chair and Vice Chair. Thus, although Board Member A was not always given a clear response to her requests to add discussion of the settlement proposals to the Board agenda,<sup>59</sup> it was within the authority of the Superintendent, Board Member B, and Board Member C to set the Board's agenda, and to decline to add a discussion of the settlement proposals to that agenda. Additionally, the Investigative Team noted that they reasonably relied on the advice of counsel regarding whether to include the settlement proposals on the agenda.

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that the Board

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<sup>56</sup> The Investigative Team noted that Teacher A's allegations were discussed in the February 25, 2019 Board meeting, but no information reflected that the settlement proposals were discussed in this meeting.

<sup>57</sup> The BEC-E Policy was amended in the September 18, 2017 meeting, in which Teacher A's allegations and settlement proposal were first discussed with the Board. The language quoted in this report was consistent in the BEC-E Policy as written both before and after that amendment.

<sup>58</sup> The minutes for the June 17, 2019 specifically identified that an executive session was held to discuss the settlement proposal related to Teacher A. The Investigative Team reasonably determined, based on interviews and meeting minutes, that the executive sessions on September 18, 2017 (referencing executive session for "consultation with legal counsel") and on June 3, 2019 (referencing a motion to "pursue a settlement" after an executive session) related to discussions of settlement proposals regarding Teacher A.

<sup>59</sup> [REDACTED] assertion that the September 18 Letter was "outdated" in November 2017 did not fully answer Board Member A's question regarding why the Board had not seen the September 18 Letter, which had been addressed to the Board.

acted unreasonably or failed to comply with RSU 21's policies related to RSU 21's response to the Complaint.

### **3. Conclusion Regarding Settlement Proposals and Complaint**

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that [REDACTED] acted unreasonably or failed to comply with RSU 21's policies with respect to communicating with the Board regarding the settlement proposals and the Complaint.

Based on the totality of the information provided during this investigation, the Investigative Team determined that the preponderance of the evidence was insufficient to find that the Board acted unreasonably or failed to comply with RSU 21's policies related to RSU 21's response to the Complaint.

## **VI. Conclusion**

The Investigative Team made the following determinations based on the totality of information collected during this investigation.

### **Confederate Flag Incident and Response**

1. The Investigative Team determined that the preponderance of the evidence was sufficient to find that [REDACTED] failed to comply with relevant policy when it did not take appropriate steps to investigate and respond to Teacher A's allegations regarding the Confederate Flag Incident.
2. The Investigative Team determined that the preponderance of the evidence was insufficient to find that the Confederate Flag Incident constituted discrimination, as that term is defined in relevant policy.
3. The Investigative Team determined that the preponderance of the evidence was sufficient to find that the Confederate Flag Incident constituted harassment toward Teacher A, as that term is defined in relevant policy.

### **Retaliation**

1. The Investigative Team determined that the preponderance of the evidence was sufficient to find that [REDACTED] retaliated against Teacher A through her 2016-2017 evaluation, in violation of the Retaliation Policy.
2. The Investigative Team determined that the preponderance of the evidence was insufficient to find that [REDACTED] retaliated against Teacher A through its involvement with the CRT Letter.

### **Communication and Response Related to the Settlement Proposals and Complaint**

1. The Investigative Team determined that the preponderance of the evidence was insufficient to find that [REDACTED] acted unreasonably or failed to comply with RSU 21's policies

with respect to communicating with the Board regarding the settlement proposals and the Complaint.

2. The Investigative Team determined that the preponderance of the evidence was insufficient to find that the Board acted unreasonably or failed to comply with RSU 21's policies related to RSU 21's response to the Complaint.

The Investigative Team is grateful to all who cooperated in this investigation, some of whom shared very personal and sensitive information. Everyone interviewed added meaningful information to this investigation.